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ABSTRACT

This report discusses the alternatives confronting teacher associations when they select a contract grievance procedure and choose an organization for grievance administration. The six major topics covered include (1) post negotiation questions, (2) grievance procedure, (3) grievance advocacy, (4) arbitration in grievance impasse, (5) specific functions of the local association, and (6) effects of grievance processing on associations and school systems. Appendixes include a sample grievance report form, the voluntary labor arbitration rules of the American Arbitration Association (AAA), the AAA demand for arbitration form, and the AAA submission to arbitration form. (JF)

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Commission on Professional Rights and Responsibilities

GRIEVANCE ADMINISTRATION

Enforcing Teachers' Contract Rights

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National Education Association

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1. AFTER NEGOTIATION WHAT?

The negotiated contract means little unless the meaning of administrative compliance can be secured through effective grievance administration

The local school board and the teacher association have just negotiated a lengthy master contract, including agreement on such diverse concerns as a grievance procedure, promotions and transfers, teaching evaluation, academic freedom, teacher assignments, salary policies, teacher hours and teaching load, service to the recognized employee organization, leave policies, and procedures for reprimand, demotion, suspension, and discharge. The contract is extremely long (nearly one hundred pages), and most clauses are quite difficult and highly technical. "Though cast in an adversary position, both parties are dependent upon their common enterprise. They meet in their contract negotiations to fix the terms and conditions of their collaboration in the *future*."[1] The contract includes an extensive description of rules (policies and regulations) that are set forth to govern the employment relationship between the board and teachers, and establishes the employment rights of teachers in every area of school district activity. Administrators have been given initial authority to interpret the agreement in the day-to-day management of schools, and the grievance procedure is available in the event of abuse of managerial discretion.

The first problem that the local association leadership confronts is breathing some life into this agreement. If these leaders are reality-oriented, they will come to three rapid conclusions:

1. Teachers have not read the contract carefully. Their knowledge tends to stop after checking the dollar amount printed opposite their salary step.
2. Principals have not read the contract carefully. They have worked hard to develop certain arrangements in the school building, and these arrangements are as comfortable as an old pair of slippers.
3. If the contract is to live anywhere, it must live in school buildings, particularly in the contacts between teachers and their immediate superior.

The triad of inexperience, inertia, and ambiguity can bring the promised substance of the group agreement to a mere shadow of existence. Middle managers and teachers did not sit for hundreds of hours at the bargaining table. When the language of the clause is not clear (and it often isn't), they do not understand the full intent of the provision. What does "emergency" mean? What does "reasonable" mean? Frequently the ambiguity is accidental—just a problem of word choice or too much rush. Sometimes one side seeks a bargaining advantage from the ambiguous clause. The weight of past loyalties and responsibilities in the school is considerable. The new one hour duty-free lunch is ignored. The negotiated written evaluations are not completed. Faculty meetings are still too frequent and too long.

Who are real parties to a grievance?

The direct parties to the negotiated agreement (rule making) are the school board and the recognized employee organization. The employer executes the terms of the contract; the association affirmatively polices these actions through a grievance procedure to establish the *meaning of compliance*. In other words, administrators act—teachers grieve. A great deal of confusion can result from a failure to recognize the existence and essential nature of these roles. The following misconceptions illustrate failures to understand contract administration:

1. "A grievance is a professional dispute between one educator and another."
2. "The purpose of a grievance procedure is to take over management of schools."
3. "The function of the association is just to assure due process."

4. "The principal may grieve against the misconduct of a teacher."

5. "PR&R committees decide disagreements between principals and teachers."

Whether or not explicitly stated in statute or bylaw, the local association has a fiduciary responsibility to members of the negotiating unit to skillfully manage the grievance procedure to assure that the group agreement is adhered to. The end of negotiation does not signal a rest period of one or more years until a new contract is to be negotiated; rather shared rule making shifts to shared management of the agreement.* A grievance raises the question: are we following our rules? The only parties that can ultimately settle this kind of question are the parties that formulated these rules.

Most people understand the collective nature of negotiation (there is a vote to accept the agreement). Grievance processing is usually a more subtle collective action. Superficially one sees an individual grievant, a respondent, and a disagreement, usually over a single act or failure to act. The association has taken an important step when it makes available its collective resources to help the individual teacher press his claim in the grievance procedure—the single employee seldom succeeds in an effort against the combined resources of the employer. But this step is insufficient—the association must develop a capacity to put the individual claim into a context of possible counter-claims, into the context of the master agreement, into the context of prior claims and their resolution, and finally into the context of the objectives of the association.

The grievance procedure poses a considerable *administrative* challenge for the local association as it seeks to identify its interest and that of the negotiating unit and to control its actions so as to produce a uniformity and consistency in regard to action and purpose. This administrative mechanism must provide a capability to:

1. *Detect* instances of possible contract violation in an inertial environment where little knowledge of the contract exists.

2. *Determine* priorities for association resource utilization in the face of competing demands.

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*It should be made clear that *formal* shared management is usually discouraged by administrators (they oppose forming a hodge podge of Mickey Mouse committees) and resisted by employee organizations (it puts a strain on the very fabric of the association). "Sharing" is usually inside the grievance procedure or an informal, behind-the-scenes action.

3. *Expend* these resources of skilled manpower and funds with optimum efficiency and effect.
4. *Feed back* information acquired from an action to determine future actions of the association.

What is a grievance?

In the simplest terms, a grievance is a claim that the employment contract has been violated. Like the oft repeated definition of neurosis—"I know two plus two equals four but I worry about it"—the literal meaning of grievance may be less troublesome than the significance of the concept of grieving. Educators commonly view grievances as negative phenomena. One hears frequent references to the possibility of eliminating grievances or preventing their formation. Principals are evaluated on the basis of grievance frequency in their buildings, and teachers who grieve are represented as rocking the boat.

Educators tend to overlook the positive elements in a grievance. Grievances can be interpreted as signals as to how an enterprise is functioning. The grievance procedure becomes a kind of healthy feedback device that modifies the tendency of a bureaucracy to run from the top down. In addition to this informative aspect, the grievance can also be seen as employment conflict in microcosm. The individual's claim of unfair treatment is positioned with others' feelings of dissatisfaction to form a level of conflict or, in a sense, a background of static. The grievance procedure can release the tension of disagreement bit by bit, avoiding a build-up of destructive conflict and optimizing the chances of maintaining the positive features of the grievance. Failure to reduce tension often results in transition from individual grievances to shared grievances and from shared single grievances to a very orchestra of dissatisfaction. Grievances can have both positive and negative features in the long range. The important point to stress is not the existence of grievances, but rather the system that should be developed to increase the likelihood of exploiting their positive features.

Grievances are frequently defined as any dissatisfaction of an employee. In this publication, we will define a grievance more narrowly as a specific claim of a violation of the rights of employment, allegedly caused by misinterpretation or inequitable application of established policy or the terms of the group contract. This is not

an academic choice; it is rather an effort to confine the grievance procedure to disputes that may be adjusted within the bounds of the authority appropriate to this forum. We will use the broader designation of *complaint*, on the other hand, to deal with violations of standards that: (1) are not presently described in the contract (though maybe they should be); (2) are described in statute but the school board is without authority to act or interpret; and (3) are described in association policy and also are outside the area of the board's authority.*

The scope of grievances

As was indicated earlier, a grievance evolves out of the manner in which a policy has been administered. While many grievances are of relatively minor importance, others are crucially important because they may involve the teacher's job security. A dismissal action may amount to a kind of economic capital punishment, especially for the older teacher and the teacher who has allegedly behaved in an immoral manner.

Grievances usually assert a misinterpretation of policy or a misapplication of policy: (a) The teacher's request for personal leave may be refused on the ground that the policy does not cover leave for purchase of a house. The problem here is, just how should this particular policy be interpreted? What was the original intent or district policy on personal leave? (b) Another teacher may complain that, although a policy has been interpreted properly, it has been applied to the wrong person. The teacher states that his pay has been incorrectly docked because of absence due to illness. If he is right, his payroll record should show that he has no recorded absences.

The highly subjective nature of professional employment will usually produce a high incidence of complaints alleging discriminatory application. The degree of specialized training and experience seen in the school or college teacher makes "equal treatment" a most difficult objective. Grievance adjustment succeeds most markedly when the question of *what* is right is sought after, as opposed to the much less meaningful *who* is right.

The association PR&R committee or the building principal could categorize grievances in the following way:

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*See page 27 for a discussion of the circumstances under which a complaint may be grievable.

(a) *Teaching Load and Class Size*—"His classes are smaller than mine"; "I teach six periods and they only five"; "I always get bus duty in the middle of the winter."

(b) *Teacher Assignment and Transfer*—"I was placed in a school with all the bad _____ (fill the blank with teachers, children, administrators, or any similar choice); "My principal won't approve my transfer request"; "I have the most seniority, but they have given the American history assignment to that new teacher."

(c) *Promotion*—"I always apply for every opening, but I'm still stuck in the classroom" (always a bridesmaid, never the bride); "George is easily the best qualified, but they gave the job to _____" (fill in—that jerk, the Mayor's daughter, etc.).

(d) *Facilities, Equipment, and Supplies*—"They have refused to replace my ten-year old textbooks"; "I have the hottest/coldest room in the building"; "It takes me six months to get a projector; when it comes, the film is locked in the mail room; when I have the film, the projector doesn't work; if the projector works, the black-out shades are broken; and if everything works just right there is sure to be an all-school assembly."

(e) *Salaries and Fringe Benefits*—"They promised me two hundred dollars more than I'm getting"; "Do I have to retire this year?"; "I have seventeen years of experience and I am only on step three."

Teacher Evaluation and Professional Growth—"He hasn't been in my classroom for five minutes in the last two years"; "So the kids were talking a bit—I like a relaxed atmosphere"; "I have two masters degrees, but I still have to take those insipid _____ courses" (fill in education, liberal arts, off-campus, or graduate).

The uninvolved will probably have difficulty suppressing a smile in reading a list of this sort, but to the person who needs the additional money, who really deserves the promotion, who shouldn't have been fired, who should have an up-to-date set of science books—for him this is no laughing matter.

The association's posture

Generally, the association's position in processing the types of grievances enumerated above is one of *advocacy*—speaking in behalf of the member's cause and utilizing association resources to

secure a remedy for his employment concern. Such advocacy, however, cannot be automatic. The diversity of interests potentially affected by a grievance are well illustrated by the following list:[2]

1. The interests of the association as an organization (as in organizational recognition, financial responsibility, deduction of dues, use of bulletin boards, and access to facilities);
2. The unassorted interests of the predominant group of employees, such as are involved in preserving the work belonging to the bargaining unit;
3. The future interests affected by the rule-making aspects of grievance adjustment;
4. The present interests of teachers who may be in competition with the immediate grievant or who may gain or lose from the adjustment of the grievance;
5. The interests of the aggrieved individual who claims that he has been damaged by the employer's failure to perform his contract obligation.

What are grievance procedures?

Appeal systems appear to be indifferent to varying institutional purposes. In the wide range of organizations—such as business, religious, military, industrial, educational, and government—appeal systems are a virtual universal in the employment relationship. When there is an available employee organization, the appeal system usually follows the standard contract grievance procedure form. When there is no employee organization, or there can be no such organization, the dominant appeal system approach is to provide some kind of quasi-third party between the employee and his immediate superior to moderate the authoritarian tendencies of the bureaucracy. The independence of this sort of ombudsman is a critical factor in the success of the alternate form. Many observers have noted that the weakness of the administrative line bypass system grows out of the fact that the "third party" is also on the payroll of the common employer.

During the decade of the 1960's, the vast majority of teachers concluded that they wanted collective negotiation and contract grievance procedures. The only matters yet to be settled conclusively are the questions relating to what form of contract grievance procedure will be selected and what kind of organization for griev-

ance administration associations will adopt. The purpose of this publication is to discuss the alternatives that teacher associations confront in regard to these questions and to advance preferred choices in the light of association experience and objectives.

One can picture a skeletal contract grievance procedure as including these structural parts:

1. Definition of a grievance.
2. Definition of who may grieve – negotiating representative,* teacher(s), employer – and who may appear on behalf of the aggrieved.
3. Formal procedure which specifies:
   (a) maximum time for processing at each step;
   (b) what happens if time limits are not observed;
   (c) when grievance is committed to writing.
4. Authority of arbitrator (an employee of disputants).
5. Procedure for appointment of arbitrator(s).
6. How costs of arbitration are to be met.

Students of appeal systems, particularly of contract or judicial grievance procedures, have described certain pre-procedural forms and incomplete procedural forms that have been observed in various employment sectors in recent decades. It is worthy of note that all three of the phases in the evolution of grievance processing described below exist in education institutions today:

1. *Deadlock or surrender* – there is an absence of power to support an employment grievance. The response to a management act at least allegedly inequitable is passive acceptance by teachers. Sometimes the grievance is so onerous that the teacher quits at the end of the year, to be replaced by a more compliant teacher.
2. *Coercion* – the grieving employee, singly (or en masse with other employees) uses some ad hoc means of making the administration unhappy with a continuance of the impasse.

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*Outside of public education, at least, the prevailing view is that just as the employee organization must be free to sift out wholly frivolous grievances which would only clog the process, so also it must be free to take a position on the not-so-frivolous. The association cannot be neutralized when the issue is chiefly between two sets of teachers. Conflict between employees represented by the same organization is a recurrent fact. While the school manager is respondent, another teacher may be a party in interest, if his welfare or rights will be affected by the outcome. *Humphrey v. Moore*, 375 U.S. 335 (1964).

The classical method for civil service employees has been an appeal to some external political source for backing (a school board member, chairman of the dominant political party, an influential parent or alumnus). More sophisticated group coercion will include such tactics as press leaks, petition campaigns, planned absenteeism, bans on extra duties, informational picketing, stop work meetings, and of course, grievance strikes. School boards are frequently vulnerable to washing dirty laundry in public, and these tactics, therefore, once discovered by employee organizations, are frequently resorted to. The employer's "jungle response" often takes the form of oral threats, strict rule enforcement, and discrimination in job assignments. The remarkable thing to most observers is the persistence of this kind of destructive warfare. However, it can be forecast that, if there is a rough parity of coercive power, the two parties will move to some more peaceful means of resolving grievance disputes. It is also possibly true that if the employer feels little discomfort in the presence of grievance impasse, he will prefer deadlock and coercion to peaceful settlement.

3. *Peaceful Settlement**—as the prenegotiation period evidences an evolution from impasse to adjustment, so, too, does the negotiation period. Whether the employer and the association move through written forms of contract grievance procedure or not, they do tend to progress through these compliance experience forms: (a) there is a formal recognition of an "exclusive" employee organization—status recognition is nice for group ego but solves few grievances; (b) the school board recognizes the association's right to represent the interests of aggrieved teachers—this is a step forward, but it fails because of the simplistic and myopic assumption that a grievance calls for the balancing of only two interests, i.e., the teacher and the principal; (c) there is an agreement as to the right of the association to express the views of all teachers (members of the negotiating unit) in grievance hearings—in this third phase, all of the information necessary to achieve an equitable adjustment is likely

*The text of this section purposely omits reference to litigation or the so-called labor court as an alternative. Legal proceedings are often poor ways of handling conflicts in employee relations because of the great cost and length of the process and the difficulty of incorporating the necessary bargaining and reconciling process in purely legal procedure. Furthermore, the courts have, in the main, declined to intervene in grievance-related disputes between employers and employees.

to be present; the problem is that the partisanship of one or both parties may stand in the way of reaching an agreement on the available evidence; (d) at the final level of maturing there is an agreement to *adjudicate* a dispute in the event of a grievance impasse—it should be apparent that in the absence of arbitration, most of the disputes resolved are those disputes that could have been settled without a grievance procedure.

Rules that regulate pay, other benefits, seniority, and conditions of promotion and retirement for teachers are voluminous. Any *unilateral* application of such rules would, however meticulous, seem arbitrary or unjust to some. By helping to frame the rules and by participating in their administration through the grievance procedure, the association serves invaluably to mitigate the feeling that such systems or their administration are arbitrary or unjust.

What is the grievance rate in public education?

One unsatisfactory answer to this question is that it depends upon whom you ask. The PR&R Commission has asked this question of school board members in some of its investigations. Frequently, their answer is, "We have heard of no teacher grievances." A few years ago, the NEA Research Division asked school districts to report their grievance rates.[3] The study reported extremely low rates, approximating one grievance per 1,000 employees per year. If one were to ask PR&R or grievance committee chairmen, the report might be as high as 50 or 60 grievances per 100 employees.

One way of counting grievances is to determine the number of grievances that are entered formally and in writing at step one of the procedure. Studies indicate that if employee organizations control or influence grievance initiation, the entry rate will approximate 10-20 grievances per 100 employees per year.[4] If employees or managers control initiation of a grievance, the rate will be much lower. If we standardize on association control over the procedure, the following variables may introduce considerable variance in the 10% average rate:

1. Organizational inexperience in association-administration relations;
2. Skill and autonomy of grievance representatives;

3. Militancy in key association and school district officials*;
4. High group cohesion in the employee organization;
5. Prominence of subjectivity in job duties, evaluation, and promotion;
6. High presence of vertical supervision.

It should also be understood that conditions producing high grievance rates also predispose to high management denial rates.

As a practical matter, a 10-20% formal grievance rate assumes a considerable burden of responsibility and administrative capability on the part of the association. It is worth noting that the association's batting average in the grievance procedure does not appear to influence initiation rate. A priority of the grievant seems to be: were my interests seriously considered, did management *listen* to my views?[5] Even relatively high failure rates seem to have only slight dampening effect on initiation.

The basic lesson that association leaders must learn is that *if teachers cannot enforce their rights, they have no rights.* The negotiated contract means little unless the meaning of administrative compliance can be secured through effective grievance administration.

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*Philip Murray is credited with the pungent quote: "The point is that when companies oppose unions, the unions elect as their leaders belligerent and willful men. No other type could survive."

2. THE GRIEVANCE PROCEDURE

The policy that the principal always has his door open sounds fine, but unless the teacher is about to resign he is not likely to go through that open door to suggest that his superior is handling work in ways that are inefficient, is creating unnecessary difficulty for teachers, or is unfair or unreasonable. The worse the situation, the less effective the open door. Furthermore, a superintendent is well advised to shut his "open door" before he ends up doing the work of his principals and confusing everybody in the process.

These traditional man-to-man patterns work poorly in anything but the simplest organizations—grievance management requires a high level of *group* functioning. In chapter 1, the point was made that in the final analysis the parties to a grievance are ultimately collective—that is, the employer and the employee organization. Individuals in an employment setting cannot function efficiently without a grievance procedure; nor can they effectively exploit the advantages of a procedure in the absence of the organizing capacities of the group.

It is important in a publication of this sort, dealing totally with the uses of contractual grievance procedures, to keep a perspective and thus avoid the danger of appearing to represent the grievance procedure as the answer to all employment contract problems—it is not. The procedure may provide opportunities for mutual understanding and for the solution of complaints, or it may worsen existing relationships—employers can force a high number of grievances to arbitration to bankrupt the association; associations can make serious that which is trivial.

Procedural schematic

Grievance procedures, with all of their potential complexity, involve just two basic processes:

1. *Bipartisan discussions* between the aggrieved and school management to adjust a dispute;
2. *Tripartite adjudication* of a disagreement when the parties cannot settle their differences merely through mutual persuasion.

Typically, the two-party meetings are first between the grievant and the immediate superior and then move from informal oral efforts to resolve the disagreement to exchanges of a written "grievance demand" and a written "grievance answer." Impasse at this first step is frequently resolved by appeals to higher management-association levels, where persons of possibly greater objectivity carry on the bilateral discussion. Terminal and binding arbitration is a kind of last resort. Many feel that the chief value of arbitration is not in its use but rather that its very presence provides a continuing incentive for the lower step parties to make the bilateral discussion work. The initiation of the arbitration step is usually controlled by the employee organization, from the reasoning that to allow each employee to overrule the association would create a condition of disorder and instability which would be disastrous to the whole system of personnel relations and contract interpretation.

Negotiating the procedure

The chief function of negotiation is to reconcile the inevitably differing interests that the school board and association bring to the table. The illustrative grievance procedure discussed below is not intended to be represented as a "model"—that is, an effort on the Commission's part to arrive at an ideal *balance* of these many conflicting interests. Rather, the procedure should be seen more nearly as the association's opening proposal for negotiation. If past behavior can be a useful guide, school boards will seek to: (a) narrow the grievance definition, (b) lengthen time limits for administrators, (c) bar the association from grievance hearings, (d) require that the grievance be initiated immediately, (e) dilute arbitration to an advisory recommendation, (f) accept grievance only from individual teachers, and (g) insist that processing take place after the close of the school day.

It would be gratuitous to attempt to prescribe definitively what clauses an association might safely trade off or, for that matter, what clauses must be preserved and "no retreat" signs set in place. The value of interests identified in the grievance procedure proposal must be balanced, along with the interests sought in other areas of the negotiation package. For example, some associations might trade off a salary raise to get arbitration, some associations might not. As an irreducible minimum, the association should: (a) seek solution to particular problems (not all problems) on the basis of standards already jointly recognized—such as those spelled out in the group agreement, (b) assure the security of the association in the procedure, (c) protect the civil liberties of individual teachers, and (d) obtain relief from the unilateral powers of the administrative line.

Illustrative Grievance Procedure	**Supportive Rationale**
I. Definitions	
A. A "grievant" shall mean a teacher* or group of teachers or the Association filing a grievance.	*Who may initiate?* Naming these three sources balances the interests of group control, individual freedom, and protection from restraint. Note, the administration cannot grieve (they administer).
B. A "grievance" shall mean a claim by a grievant that a dispute or disagreement of any kind exists involving interpretation or application of the terms of this Agreement or of an existing board rule, policy or practice, or that an employee has been treated inequitably, or that there exists a condition which jeopardizes employee health or safety.	*Seek a broad definition.* All written policies and continuing practices that have the effect of policy should be encompassed within the definition of a grievance. The narrower the definition is, the greater the opportunity for unilateral and arbitrary exercise of management discretion. Such items as terminations or nonplacement on tenure often are administrative targets for exclusion by definition from the grievance procedure. The local association should resist these limitations.

*"Teacher" is used in this setting to mean a member of the bargaining unit. In inclusive units, the association serves its teacher and administrator members alike by representing their interests as *employees*. See page 72 for discussion of the role of the principal-member of the bargaining unit.

	By narrowly defining what is grievable, the teacher's use of the procedure is concomitantly limited. Too narrow a definition can also dilute substantive gains achieved through the negotiation process. It should be recognized, however, that if adherence to law, to past policy and practice, to health and safety, and to just cause in the exercise of managerial discretion are covered elsewhere in the contract, then "application and/or interpretation of the agreement" is the broadest possible definition of both a grievance and an arbitrable matter.
C. A "party in interest" is the person or persons making the claim and any person who might be required to take action or against whom action might be taken in order to resolve the claim.	*Diversity of interests.* Assures that the perspective of the claim will be obtained.
D. "Days" shall mean teacher employment days, except as otherwise indicated. If the stipulated time limits are not met, the grievant shall have the right to appeal the grievance to the next level of the procedure.	*Automatic appeal.* Grievant not penalized for dilatory acts of other parties.
II. Rights to Representation	
A. The Board shall recognize a PR&R committee upon its selection by the Association. At least one Association representative shall be present for any meetings, hearings, appeals, or other proceeding relating to a grievance which has been formally presented.	*Association rights.* The association should have the right to initiate grievances, in order to guarantee representation and protection to all teachers, as well as the association. Since associations may be held liable (if proven negligent) for not representing members of the bargaining unit, the association's interests must be protected by appropriate procedural clauses. It is important for the association to develop internal procedures for processing

grievances which insure good faith representation of each person covered by the procedure.

B. If, in the judgment of the Association, a grievance affects a group of teachers or the Association, the Association may initiate and submit such grievance in writing to the Superintendent directly, and the processing of such grievance shall be commenced at Level II. The Association may process such a grievance through all levels of the procedure, even though there is no individual aggrieved person who wishes to do so. Class grievances involving more than one supervisor and grievances involving the administrator above the building level may be filed by the Association at Step II.

C. In matters dealing with alleged violations of Association rights, the grievance shall be initiated at Step II.

Level One bypass. When violations occur that infringe upon the rights of the association, such as refusal to allow an association representative to be present at all meetings involved in the processing of a grievance, the association should initiate its grievance at level II of the procedure.

D. The Association on its own may continue and submit to arbitration any grievances filed and later dropped by a grievant, provided that the grievance involves the application or interpretation of the Agreement.

III. Individual Rights

A. Nothing contained herein shall be construed as

Administrative line restrictions. There may also be teachers who desire to

limiting the right of any teacher having a complaint to discuss the matter via administrative channels and to have the problem adjusted without the intervention of the Association, as long as the Association is in attendance at these discussions and is notified in writing as to the disposition of the matter and such disposition is not inconsistent with the terms of this Agreement.

handle their own problems via an administrative line rather than through the negotiated procedure. Any teacher can present problems informally and have them adjusted without association interference; however, the association must obtain written notice of the disposition of all complaints. It is these written answers that assist the association's efficient monitoring of all problem situations. The association must vigorously assert its rights to protect other teachers from unfavorable decisions which may result from administrative line adjustments. Therefore, these decisions should not be allowed to serve as precedent for other teachers.

B. A grievant may be represented at all stages of the grievance procedure by himself, or, at his option, by an Association representative selected by the Association. If an aggrieved party is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

Representation. Readers will note another balancing effort. The grievant is free to speak in his own behalf. He may not bring in others (for example, minority organizations) to plead his cause.

IV. Procedure

Step 1. The parties in interest acknowledge that it is usually most desirable for an employee and his immediately involved supervisor to resolve problems through free and informal communications. Within a reasonable amount of time following knowledge of the act or condition which is the basis of the complaint, the grievant may present the grievance in writing to

From informal to formal. It is generally accepted that grievances expressed orally and answered orally are less difficult to resolve. However, the association will want to know what is being "given away" at step I and will formalize the step by requiring submissions in writing. A compromise might be: a written grievance requires a written answer.

Specific time limits. The prompt resolution of problems avoids the possible frustration that arises during a process

the immediately involved supervisor, who will arrange for a meeting to take place within four (4) days after receipt of the grievance. The grievant and/or the Association and the supervisor shall be present for the meeting. The supervisor shall provide the aggrieved party and the Association with a written answer to the grievance within two (2) days after the meeting. Such answer shall include the reasons upon which the decision was based.

Step 2. If the grievant is not satisfied with the disposition of his grievance at Level I, or if no decision has been rendered within six (6) school days after presentation of the grievance, then the grievance may be referred to the Superintendent or his official designee. The Superintendent shall arrange for a hearing with the grievant and/or the Association, to take place within five (5) days of his receipt of the appeal. The parties in interest shall have the right to include in the representation such witnesses and counselors as they deem necessary to develop facts pertinent to the grievance. Upon conclusion of the hearings, the Superintendent will have four (4) days to provide his written decision, together with the reasons for the decision, to the Association.

where the end is not definitely in sight. Some mutual extensions of time may be tolerable, but prompt resolution of problems is essential. Promptness is important to teachers because inordinate delays may result in a waiver of the right to file the grievance as well as discourage teachers from regular use of the procedure. In addition, delays may make advocacy difficult.

Minimize number of steps. There is a likelihood that solutions to grievances become more attractive when minimal amounts of time are allotted to solving a problem. To allow an excessive number of steps to be negotiated into the agreement merely results in grievances passing from administrator to administrator without likelihood that the initial decision will be reversed. The whole process then becomes so time-consuming that the value of the procedure is virtually negated. Administrators often urge the use of what is referred to as the "proper channels." Experience has shown that "proper channels" are not usually defined for teachers, or the various persons in the administrative chain lack the authority to make the change sought.

Step 3. Binding Arbitration*

a. If the grievant is not satisfied with the disposition of his grievance at Level II, or if no decision has been rendered within ten (10) school days after he has first met with the Superintendent, he may within five (5) school days after a decision by the Superintendent or fifteen (15) school days after he has first met with the Superintendent, whichever is sooner, request in writing that the Association submit his grievance to arbitration. If the Association determines that the grievance involves the interpretation, meaning or application of any of the provisions of this Agreement, it may, by written notice to the Superintendent within fifteen (15) school days after receipt of the request from the aggrieved person, submit the grievance to binding arbitration. If any question arises as to arbitrability, such question will first be ruled upon by the arbitrator selected to hear the dispute.

b. Within ten (10) school days after such written notice of submission to arbitration, the Superintendent and the Association will attempt to agree upon a mutually acceptable arbitrator and to obtain a commitment from such arbitrator to serve. If the parties are unable to agree

Terminal step. The key element of a grievance procedure is binding arbitration. Binding arbitration is indispensable if the terms and conditions of the negotiated agreement are to have real meaning. The board's willingness to accept binding arbitration of grievances is a direct measure of its good faith intentions to honor negotiated commitments.

In the absence of arbitration, the association may be subject to unsatisfactory and unilateral determinations as to the meaning and application of a bilaterally negotiated policy.

*A thorough discussion of arbitration is contained in chapter 4. Appendix 2 contains the Voluntary Labor Arbitration Rules of the American Arbitration Association.

upon an arbitrator or to obtain such a commitment within the 10-day period, a request for a list of arbitrators may be made to the American Arbitration Association by either party. The parties will be bound by the rules and procedures of the American Arbitration Association.

c. Neither party shall be permitted to assert in the arbitration proceedings any evidence which was not submitted to the other party before the completion of Level II meetings.

d. The arbitrator selected will confer with the representatives of the Superintendent and the Association and hold hearings promptly and will issue his decision not later than twenty (20) days from the date of the close of the hearings or, if oral hearings have been waived, then from the date the final statements and proofs are submitted to him. The arbitrator's decision will be in writing and will set forth his findings of fact, reasoning and conclusions on the issues submitted. The arbitrator will be without power or authority to make any decision which requires the commission of an act prohibited by law or which is violative of the terms of this Agreement. The decision of the arbitrator will be submitted to the Board and the Association and will be final and binding upon the parties.

e. The costs for the services of the arbitrator, including per diem expenses,

Oral decision. Some procedures provide that, on the agreement of the two parties, the arbitrator's decision may be given orally. A written decision, though frequently desirable, is costly and not always necessary.

Arbitration costs borne equally. All expenses of the arbitrator and the American Arbitration Association

if any, and his travel and subsistence expenses and the cost of any hearing room, will be borne equally by the Board and the Association. All other costs will be borne by the party incurring them.

should be shared equally by the board and the association. Each side should bear all the expenses for its own counsel. If transcripts are requested by both sides, this cost should be shared equally.

Failure to specify who shall pay what costs could lead to a situation where the board feels the initiator of the grievance is obligated for all expenses incurred.

V. Exceptions to Time Limits

When a grievance is submitted on or after June 1, time limits shall consist of all week days, so that the matter may be resolved before the close of the school term or as soon as possible thereafter.

Adjustment of time limits. Specific provisions should be outlined for adjusting the time limits in the processing of a grievance filed near or after the termination of the school year, to allow all parties opportunity to resolve the matter before school closes.

VI. No Reprisals

No reprisals of any kind will be taken by the Board or the school administration against any teacher because of his participation in this grievance procedure.

Intimidating actions. Often a teacher is hesitant to process a grievance for fear his job security or status may be threatened if he enters the grievance procedure. Specific reference to no reprisals for filing or participating in a grievance becomes formal recognition that all intimidating behavior on the part of an employer is expressly forbidden. Specific reprisal actions, including the keeping of secret records or files on teachers who process grievances, must be vigorously opposed.

VII. Cooperation of Board and Administration

The Board and the administration will cooperate with the Association in its investigation of any grievance, and further will furnish the Association such information as is requested for the processing of any grievance.

Association right to information. Effective and intelligent processing of a grievance is improved when the association has access to information in the possession of the administration which has a bearing upon the grieved matter. Complete information enables the association to assess the grievance adequately. Through access to this in-

formation, the association may discover unknown facts which may properly or improperly have affected the administration's decision in the matter which gave rise to the grievance.

Denial of information may prove to be an unfair labor practice or may prove to contribute to the loss of the grievance. It is also expensive and time-consuming to the association. The longer it takes to gather all the information to solve the grievance equitably, the greater will be the possibility for each party to assume a no-retreat stance which will only be solved by arbitration.

VIII. Released Time

Should the investigation or processing of any grievance require that a teacher or an Association representative be released from his regular assignment, he shall be released without loss of pay or benefits.

IX. Personnel Files

All documents, communications, and records dealing with the processing of a grievance shall be filed separately from the personnel files of the participants.

X. Grievance Forms

Forms for filing grievances, serving notices, taking appeals, reports and recommendations, and other necessary documents will be prepared jointly by the Superintendent and the Association so as to facilitate operation of the grievance procedure. The costs of preparing such forms shall be borne by the Board.

Additional Warning: No mention of internal association affairs.

Internal association affairs must remain completely independent of any school board policies or negotiated agreements. The grievance procedure must not control matters that are of a purely internal nature to the association. For example, there should not be spelled out in the agreement the manner of selection of the members of the PR&R committee, or the number it shall comprise. Whether to process a grievance further or to take a matter to arbitration or any other similar decisions are strictly association decisions, and no clause should be included in the contract to share these decisions with the administration.

3. GRIEVANCE ADVOCACY

The purpose of this chapter is to outline and emphasize the advocacy role of the association as it processes grievances. While the particular steps and specific actions may not apply at all levels of the grievance process, the principles and techniques outlined have general application in varying degrees as a complaint moves through the grievance process and terminates in the arbitration proceeding.

The advocacy function (defined as pleading the cause of an individual or group) maintains the integrity of the grievance process. Advocacy is the responsibility of the association, exercised through any designated person who is charged with investigating and processing grievances at each level of the procedure.

The Advocate

The key figure in securing compliance with the terms and conditions of the negotiated agreement is the association representative who observes, reports, investigates, and processes grievances.* The advocate should be attuned to the individual and collective intents

*For purposes of this chapter, one association representative is referred to as having responsibility for such functions as observation, reporting, investigation, and processing of grievances. It should be noted that several individuals might be involved in these activities. See chapter 5 for clarification.

and desires of the members of the association. All of his activities are carried out in anticipation of protecting the rights afforded by the agreement individually to each member and collectively to the association. His capacity to be effective is directly related to his advocacy of positions whose purpose is to achieve an equitable resolution of the grievance.

The advocate must want to help his colleagues, be ready to accept blame when decisions go contrary to the wishes of a member, and recognize that he will seldom be thanked if he succeeds in making the agreement a viable and meaningful document. As he pursues the advocate's role, there are attitudes, approaches, and principles which can guide him.

His attitude sets the tone and affects the ideology of the membership. He should respond in a manner which will increase his effectiveness as he serves as their spokesman. Members should see the advocate as their representative, concerned with resolving difficulties to their satisfaction.

While conveying an outward appearance of sympathy and support, the advocate must also, in the initial investigatory stages, maintain a degree of objectivity and even skepticism about the complaint being presented. He should listen attentively and mentally note inconsistencies. Each complainant should be approached as one who must "make his case"—but still be made to feel that the grievance representative is a true ally. This dual approach is essential during the investigative phase, since the representative must first fact-find in order to formulate and support an approach to the claim that maximizes its chances for securing the remedy sought.

Occasionally, a teacher may ask his grievance representative for assistance in a matter that is totally frivolous or without basis in fact. In some instances, to pursue such a matter would be a disservice to the member himself. In this sort of situation, the grievance representative would be well advised to counsel with the individual, to seek some other basis for obtaining employment satisfaction. It should be clear, however, that the grievance procedure is not a panacea for all job-related difficulties.

Complaint Evaluation

The association must investigate every complaint, to obtain the facts essential for making a proper determination of the most advantageous course to pursue to achieve resolution. In this initial

phase, a complaint may be better pursued in some channel other than the grievance procedure. This initial fact-finding phase is conducted with a view to answering the following six questions:

WHO: Who are the persons involved in the incident: complainant, witnesses, the administrative authority allegedly faulting the member? Who will stand behind the claim? If no individual is willing or available, does the association wish to grieve in its own name?

WHAT: What is the real or imagined complaint? What is alleged to have been done or not done? Does the claim involve a violation of a provision of the agreement or the intent of the negotiators? If not, is there an association interest in the subject of the claim?

WHEN: When did the incident occur? Is it within the time limits of the grievance procedure?

WHERE: Where is the violation alleged to have occurred? Where is the appropriate level to enter the grievance? Is it amenable to resolution at step I or step II?

WHY: Why did it occur? Is it a result of a misunderstanding? Why is such an incident a grievable matter under the terms and conditions of the contract?

HOW: How is the association affected? Does it have a position regarding the provision allegedly violated? How has the member been affected? How have such matters been resolved in the past in the building and in the district? How should this matter be processed?

Grievance Processing

Grievance investigation

Each grievance offers a new and unique challenge. Is the alleged matter real or imagined? Is there in fact a grievable matter?* What defense should be raised by the grievant? To answer these questions, the advocate must gather and evaluate the facts. These initial activities constitute the grievance investigation.

*As a practical matter, when a teacher enters the grievance procedure with a claim, it is a grievable matter, so long as the member has the right to initiate a grievance. (His claim may not be arbitrable, but that decision is not made until the terminal step of the procedure.) The theoretical meaning of "grievable matter" is defined in each contract when a grievance is defined.

There are two major factors in the conduct of investigation at any stage. The first is the *building of rapport* with all persons interviewed or interrogated. Putting the complainant or witness at ease increases the likelihood of obtaining information. The grievance representative must be forceful without seeming superior. He should be sympathetic and understanding in his demeanor, without appearing to be partial or prejudiced toward one side or the other in a dispute. Distrusts and apprehension must be reduced whenever possible.

The second factor is the *avoidance of any preconceived notions* regarding the alleged grievance. Keep an open mind. Don't devise a handle, a theory, or a conclusion as to what you think happened and then set about to make the facts fit this notion, or seek only those facts which tend to substantiate this theory.

Investigation requires insight, intelligence, persuasiveness, persistence, and objectivity. Through training and practice, the association representative acquires new investigative skills and develops a variety of techniques for the conduct of interviews and interrogations, and increases his expertise in obtaining evidence to support the association's advocacy position.

The following processes comprise the grievance investigation and, if performed effectively, bridge the gap between the raw claim and a well-defined grievance.

Processing the grievance promptly

Timeliness is of the essence in grievance processing. Most agreements establish time limits for the filing of grievances. To meet these deadlines, it is imperative that all grievances be investigated expeditiously. Failure to comply with specified time limits can result in a waiver of the right to file a grievance. If additional time is required, make a written request for an extension of the time limits.

The focus generally is on resolution of the difficulty at the lowest level in the shortest amount of time. As time passes, memories become dulled, evidence can be lost, destroyed, or distorted. Facts tend to become more closely allied with what we think happened than with what actually did happen.

Interviewing the grievant

The grievant is usually the first person to be interviewed. The purpose is to obtain as much information as possible to determine the nature and extent of the grievance. This is the time to see all sides of the matter without taking sides, but keeping sight of the primary function of the advocate to assist the aggrieved member. Accuracy and objectivity can be more assured by application of the following general rules:

- Be solicitous to obtain the cooperation of the grievant.
- Maintain an objective attitude.
- Ask specific questions.
- Request relevant evidence.
- Avoid hasty conclusions.
- Avoid personal involvement in the issue.
- Avoid talking about blame, either directly or by implication.
- Do not express preconceived notions, ideas, or conclusions.
- Do not pass critical judgment on the matter.
- Do not commit the association to a course of action.

Locating and interviewing witnesses

At times, people will be reluctant to be involved, and witnesses may not come forward voluntarily. As the member's advocate, you will have to search out and positively identify those persons who can furnish information about the incident.

The best account of a matter comes from persons who have first-hand knowledge, gained in the course of their daily activities or as a consequence of the nature of their duties and their particular position. Witnesses often are able to provide more objective information than can any of the parties to the complaint. Also, one witness can help identify other witnesses and possible sources of information.

During the investigation, do not spend an inordinate amount of time with each witness. It is usually best to clearly identify them and to obtain a brief general statement from each concerning the

information which they can contribute. Be specific enough to elicit the essential details.

Avoid interviewing witnesses in the presence of one another. Obtaining the details separately helps prevent one witness from being influenced by the recitation of another.

Evaluating the nature of the grievance

Conducting the investigation must go beyond the simple practice of filling out a grievance form. Evaluate the grievance to determine if an issue has been raised under the terms and conditions of the agreement. This is accomplished by asking the complainant a few questions and noting the elements of the incident to properly classify it. Do not accept without question anything which is said. Be quick to recognize discrepancies or unusual situations in light of the terms and conditions of the agreement.

Remember, not all claims are violations of the agreement. Some may need to be referred to other association agencies for resolution.

Recognize the difference between facts and conclusions. If the grievant says, "He harassed me," ask him, "*What* did he do?"

Reducing the grievance to writing

Once a clear idea of the grievance has been developed, the grievant should be asked to put his claim in writing, in his own words. This requires a degree of abstraction which has been missing as the grievant verbalized his concern. He now must face up to the real issues and leave out imagined wrongs. Bear in mind that he is looking at the dispute from his own biased viewpoint. If you have thoroughly interviewed him, he should have a better understanding of what did or did not occur.

An additional advantage of writing the complaint is that such a requirement can do much to preclude spurious or unfounded complaints, especially if there is a requirement that all grievances be signed by the initiator. This has the further distinct advantage of disproving a subsequent claim that the association representative misunderstood the complaint or refused to process a legitimate grievance.

Making a note of all matters

Begin to take notes as soon as practical. The longer the delay, the greater the danger of omitting small but important facts. Notes must be accurate, understandable, and as complete as possible, since they will become the record on which decisions will be made as the grievance is moved into the procedure and perhaps to arbitration.

Notes would include but are not necessarily limited to the following items:

1. Name and position of the grievant;
2. The grievance;
3. Date, time and place of the incident;
4. Name and positions of witnesses;
5. Results of interviews of claimant and witnesses;
6. Evidentiary matters.

Reporting the incident to the PR&R committee

The results of all investigations should be reported to the grievance chairman (see page 66). Some associations may have an established rule that all matters will be referred for consultation and advice before there is any contact with the administration. Additionally, it may be decided that proper resolution can only be obtained at a higher level and that such matters should be handled by assignment from the committee. The association may decide upon a particular course of action which is contrary to the interests of one member or a particular group when there is a conflict within the membership. This is a determination that only the association can properly make.

The grievance chairman should best be able to:

- Clearly identify the issue;
- Determine how best to proceed;
- Decide who should process the grievance;
- Indicate the best possible solution or defense.

Seek and encourage assistance from the chairman, from more experienced grievance representatives, and from those who have had experience in handling a particular type of grievance. Combine

your efforts and utilize the skills of others to help achieve the maximum success.

Formulating the grievance

There is no single procedure to outline how to move from a nebulous complaint to a formalized grievance. There are some suggested approaches which can assist in determining the nature of the grievance and how best to argue in behalf of the grievant. The steps are related to the problem of determining what actually occurred and what specific provision of the agreement is applicable:

- Critically investigate the complaint to determine the nature of the alleged grievance.
- Arrange and correlate information and evidence.
- Formulate the issue in terms of the elements of proof required to support the advocacy position, and broadly enough to maintain flexibility and not foreclose the association unnecessarily from raising related issues at a later time.
- Select the equity handles (discussed later in this chapter) which most nearly identify the problem in terms of what is fair and equitable in light of the agreement and in light of past practices in similar grievances.
- Test the various equity handles on the basis of consistency with known facts, supporting evidence, and past precedents.

These steps require the construction of hypotheses and formulation of conclusions. It is necessary to maintain constant vigilance against the pitfalls of false premises, fallacies of logic, unjustifiable inferences, ignorance of conceivable alternatives, and failure to distinguish between the substantive and procedural aspects of a grievance.

The first three steps have been discussed in relation to the investigative phase of complaint processing. The last two will be dealt with later in this chapter.

Main Types of Grievances

Within the agreement, there is a definition of grievable matters. The wording usually is broad and general in nature. Nonetheless, grievances may be specifically characterized into four major types:

1. Disagreement over meaning or application

In such disputes, associational survival is at stake. Association values and reasoning were negotiated into the agreement. Those rights are now allegedly being denied. It is in this type of grievance that the association establishes and reinforces its dominant value premises in the minds of management, the members, and the grievance representative. They do this by maintaining a single interpretation of the agreement. The association's position is the responsibility of its elected officials.

Refusing or failing to obtain an interpretation can result in a *de facto* decision, since the association, by failure to raise the issue, implicitly agrees to a precedent. Its acquiescence tends to give validity to management's interpretation. Management has the advantage of demonstrating that it has, in fact, without objection on the part of the association, so interpreted the agreement on several or numerous occasions in the past. (This is one important reason why the association should have the right to file a grievance.)

In this type of grievance, the facts of an issue are not usually in dispute. Something did or did not occur. A contrary meaning is attached to a term or condition of the agreement by the association and the administration.

Example: The contract states, "A teacher is authorized a maximum of 3 days' leave with no loss of pay on account of death of a member of the teacher's family." The teacher's first cousin (blood relation) dies, and the teacher is absent for 3 days. The administration deducts 3 days' pay on the grounds that a first cousin is not a "member of the teacher's family."

Resolution of this grievance requires an interpretation of the meaning of the word "family."

There is no question as to the absence of the teacher. The fact that a first cousin died is not in dispute. Nor would the association argue that the administration did not have a right *per se* to deduct pay.

The matter turns on whether a first cousin is included in the term "member of the teacher's family." If so, then the deduction is not permitted.

In defining the elements of such a grievance, the association should seek to answer the following questions as related to the administration's interpretation:

- Is the association denied the fruits of the agreement? What is the effect on the bargaining unit?
- Does such an interpretation derogate the agreement? Is the unit undermined?
- Does the interpretation capriciously limit or destroy rights provided in the agreement? (The impact can be on individual members or groups.)
- Does it reduce the scope of the bargaining unit? Is the unit denied a previously enjoyed or anticipated right?
- Is management thus able to avoid contractual obligations to the association or its members?

The evidence to support the association's position may consist of:

- Minutes of negotiation sessions between association officials and management.
- Testimony of those who negotiated the agreement.
- Settlements in previously processed grievances.
- Arbitration awards within the particular system or other kinds of employment.

Whereas other types of grievances are investigated from the "bottom up," this type is investigated at the highest levels of the association.

Frequently, the following principles of contract language analysis may prove helpful in this type of grievance:

1. *Specific language prevails over general language.* For example, an arbitrator would probably rule in favor of a teacher who refused to perform bus duty one-half hour before school where the contract specifically stated that "no teacher shall be required to report for duty earlier than 15 minutes before the start of class," and where the contract provides in another place that "teachers shall be required to perform not more than 5 hours a semester of extra duty." "Specific" does not necessarily refer to clear and unambiguous language but rather to wording that deals directly with an issue rather than by inference.

2. *Clear and unambiguous language usually prevails over past practice.* Past practice frequently gives meaning to words as used in a contract. But where the language is crystal clear, an arbitrator will rule in favor of the language, even if the practice has been contrary over a period of time without complaint by the employee organization. For example, an arbitrator would probably rule in favor of a counselor who demanded a 45 minute duty-free lunch where the contract reads that "all employees in the bargaining unit shall have a duty-free lunch hour of 45 minutes," but where the practice had been for years to keep counselors on call during lunch for student discipline problems. Another way of phrasing this rule is—"If the language points in one direction and the practice points in the other, go with the language."

An arbitrator is empowered to determine the mutual intent of the contracting parties and will be guided by (1) specific language over general language; (2) clear and unambiguous language over past practice; (3) past practice.

2. Plain violation of the agreement

This type of grievance may be the result of ignorance, carelessness, error, omission, or the commission of an act known to be contrary to the terms of the agreement. It is probably the simplest type of grievance to substantiate, since it requires in the simplest form proof that some act did occur which violates a provision of the contract.

Example: "Teachers may be required to remain after the end of the duty day without additional compensation for no more than one and one-quarter hours each week. Compensation will be on the basis of their respective current individual rates of salary. The duty day is from 8:15 to 3:15 daily."

The teacher attends a meeting scheduled by the principal on Monday after 3:15, which lasts for three hours.

The teacher does not receive the additional pay on payday and inquires of the principal, who states that he has not forwarded and does not intend to forward the necessary time sheet to the central payroll office. He explains that it is the teacher's responsibility

to spend extra time on school matters and he doesn't get any extra pay for the many hours he spends after 3:15 each day; therefore the teacher is not entitled to pay.

This matter can be substantiated by gathering evidence to support the fact that the teacher did work the overtime as stated, and evidence from the payroll records to show that such pay was not received. The administration is not contesting the interpretation of this term of the agreement but is rather ignoring the term.

3. Dispute over the facts

In this particular type of grievance, there is no question as to what the agreement provides. The issue turns on whether the act which prompted the administrative action did or did not in fact occur as alleged. If the act did not occur, then the penalty should be withdrawn and the teacher restored to his former status.

Example: "All teachers will be present in their assigned room twenty (20) minutes before the scheduled student starting time at the opening of the school day." The teacher is given a written warning for failing to be in the assigned room 20 minutes before the opening of school. The teacher claims that she was in the room.

The case rests on whether the teacher was or was not in the room at the appointed time. Adjustment is easier if evidence can be obtained that the teacher's allegations as to the facts are supportable. However, it must be kept in mind that the administrator took the initiating action, and he would have the burden of supporting his contention.

4. Disagreement as to the reasonableness or equity of administrative acts

Cases of this sort give the association great discretion as to the actual defense to be raised in the grievance process. Such grievances usually result when, in the opinion of the association, the administrator exceeds his discretionary authority under the agreement.

Example: "Extra duty (which has been previously defined) is to be assigned on a rotating basis to all teachers."

The teacher claims that he has been assigned duty more frequently than any other teacher. He maintains that this is not fair.

Determination of this type of grievance can be arrived at by answering the following types of questions:

- Was the act unreasonable, arbitrary, or discriminatory?
- Was the act intended to or did it actually result in unfair or inequitable treatment?
- Was the act deliberately aimed to affect a member or group in an adverse manner?
- Has the rule been consistently enforced against *all* employees?
- Has one member or a group been singled out for "special treatment?"
- Have others violated the rule without being punished?

The central issue is not one of the merits of the action, or of whether the member did or did not commit a particular act, but rather is one of seeking *equity*—application of the terms and conditions of the contract in a manner that is impartial, just, fair, and right (not in a legal sense, but rather in consideration of the facts and circumstances of the specific case, consistent with the negotiated agreement).

Equity Defenses (Tests for "Just Cause")

The advocacy position usually requires a defense based on what the agreement says, not a defense of the particular act allegedly committed by the member. Equity is provided by raising a defense or presenting an argument which assures equitable resolution of the grievance. The following are some of the basic defenses or equity handles used in the advocacy position taken by the association representative.

1. **The conduct of the grievant is unrelated to the policy cited.**

Mrs. Teacher was discharged for "incompetency," in that she failed to "submit lesson plans, as required, at weekly intervals." The arbitrator concluded that, at most, she could have been punished under a policy requiring the "timely submission of appropriate reports and records."

2. **The policy is unreasonable.**

The policy states that "no teacher may engage in any activity outside of school hours for which any remuneration is received." Mr. Teacher is discharged when it is learned that he is employed by a large supermarket for four hours per day Monday through Friday and all day Saturday.

The school board cannot show that such employment interferes with the efficiency of the teacher in the classroom; it does not reflect unfavorably on the school system, and it does not have a deleterious effect on the students. Such a policy would be unreasonable.

3. **The policy is so broad or vague that it does not clearly indicate prohibited behavior.**

The policy states that: "A teacher may be discharged for failing to present a neat appearance while in the performance of his duties."

Mr. Teacher, during the summer vacation, grew a beard. It is short and well-trimmed. Teacher returns to school in September and in October is discharged.

The policy does not state or imply an ascertainable standard. Unless the term "neat appearance" is defined, it fails for vagueness. The teacher cannot realistically comply with the policy.

4. **There is insufficient evidence to prove the alleged violation.**

"Unsatisfactory performance is cause for nonrenewal of contract." Mr. Teacher is teaching in his third year. In each

of the two previous years he was rated "satisfactory." An annual rating is prepared in April. The principal observed Teacher for five minutes. There is no other evidence of observation, counseling, criticism or assistance being rendered by the principal.

There is a lack of conclusive evidence to support a charge of unsatisfactory performance.

5. **Application of the rule is discriminatory or inconsistent.**

The policy states that: "Absences in excess of three days may require a doctor's certificate before being authorized as chargeable against sick-leave."

For many years the school administration has credited sick-leave upon receipt of the leave form signed by the teacher and the principal. Mrs. Teacher, head of the association PR&R committee, is absent five days but does not see a doctor. She applies for credit to sick-leave. When she fails to furnish a doctor's certificate, the absence is classed as unauthorized and she is made to forfeit five days' pay.

Singling out Teacher and demanding something from her which has not been required of all teachers, in order to have sick-leave credited, is discriminatory. There is a need to be fair and equitable in the treatment of *all* employees.

6. **Teacher has a right to know the regulation and any penalty and to receive a warning in advance of its application.**

Mr. Teacher was suspended without pay for two weeks for violation of a policy which forbade teachers "to work in the school building on weekends (Saturday and Sunday) without prior approval of the principal."

It was shown that this policy was contained in the policy manual in the principal's office. Teachers were not instructed to read the policy manual. This particular policy had been verbally communicated to the principals, but had not been disseminated to the teachers, nor had it been posted on a bulletin board customarily used for school announcements.

Failure to make Teacher aware of the policy, or to warn him that further violation will result in disciplinary action, may be sufficient basis to nullify the punishment and to require that the adverse personnel action be removed from his file and that he be reimbursed for all pay and allowances which were forfeited.

7. **Extenuating circumstances were not considered in assessing the penalty.**

a. Principal censures the action of Mrs. Teacher. He then berates her in front of the class and she retires to the faculty lounge. Mrs. Teacher is suspended for ten weeks for leaving the class unattended and for using abusive language towards the principal.

Teacher had been a competent teacher for eight years and had no record of any previous offenses. The incident cited was "one isolated, emotional outburst," and it was shown that the principal, by his actions, had provoked the teacher. Further, the teacher returned to her class within ten minutes after regaining her composure.

These extenuating circumstances are worthy of consideration and warrant reduction of the punishment to a lesser penalty.

b. A high school is experiencing difficulty in locating a teacher for social studies. Mr. Teacher, a math instructor, is prevailed upon by Principal to teach two sections of social studies. At the end of the year, Teacher is charged with incompetence and not recommended for renewal.

The arbitrator would rightly consider, in extenuation, that Teacher was satisfactory in his performance within his subject area. The fact that he was teaching outside his area of competence would be a relevant consideration. Teacher could not be reasonably expected to perform adequately in an area for which he was not qualified; therefore he could not be punished for such failure.

8. **Punishment was unreasonable in relation to the provision violated.**

The policy requires the teacher "to be present in the classroom fifteen minutes prior to the start of school."

Mrs. Teacher arrives ten minutes late. Prior to her arrival, one of the students throws a piece of chalk, causing a child to lose the sight of one eye. Mrs. Teacher is discharged for tardiness, resulting in a serious injury to a pupil.

Mrs. Teacher successfully argues that the only violation she has committed was the one of being late. The punishment should be no greater than that usually administered for such infractions. The resultant injury to a pupil was not the direct result of negligence on Teacher's part and therefore was not a proper consideration in determining the penalty.

Advocacy in the Grievance Hearing

The association must vigorously pursue the interests of the grievant. This can only be successfully accomplished in a face-to-face exchange. Advocacy cannot be effectively achieved by an exchange of forms, memos, or letters.

The spokesman for the association enters the grievance procedure as a full partner and legitimate participant. He stands upon a firm and carefully developed base of support. He is there to negotiate for a settlement—not merely to listen but to speak, not merely to speak but to be heard, not to accept a unilateral decision but to negotiate a bilateral settlement.

Each participant operates from a power base. Each has an organizational structure, officials, and the resources of a governmental agency or a state and national association. The negotiated agreement is evidence of the equality of the partners and their ability to make an agreement which is viable and workable. Neither adversary should be able to exercise an amount of control which results in the circumvention of the terms and conditions of the agreement.

The attitude of the association representative should not perpetuate administrator-teacher roles. In the grievance process, there are only equal parties to an agreement.

Any psychological factors should be of a nature to create equality. Use positive thinking. Think and act as an equal, and by your acts be accepted as an equal. Make positive statements. Do not exhibit a negative approach or a defeatist attitude.

Equal standing can be maintained by understanding the following principles:

- The administration is not granting any favor by participating in the process. They have an obligation to participate.
- The time and date of the meeting should be mutually acceptable. If it isn't convenient for the association representative, say so and reschedule it.
- The place of the meeting should be in a neutral surrounding. Get the administrator out from behind his desk—out of his office. A conference room provides an ideal setting.
- If supplies or equipment are needed, ask for them and proceed only when these requirements are met.
- Be at ease. Do not show any greater deference than common courtesy requires.
- Don't be intimidated.
- Do not permit interruptions. This is no time for the administration to conduct "business-as-usual." If it happens, recess the grievance conference until complete privacy is assured.
- Learn more about the administrators—deal with their habits, fears, strong points and weaknesses, and know their reactions to specific problems and how they respond to various approaches.
- Learn in advance what actions the administration is likely to take in particular situations.

Processing the grievance requires tact and knowledge of facts and the agreement, coupled with persuasion. Each situation will require the development and use of certain techniques. Through experience, you come to know the best approach for taking a particular type of grievance to a particular administrator. There are no hard and fast rules. You have to become aware of and apply a technique as each situation is diagnosed.

Some general rules might be:

- Get the administration into a receptive mood.
- Start off informally.
- Emphasize the grievant's good points.
- Play down the grievant's shortcomings.
- Remind the administrator of his image and responsibility to maintain high morale.
- Appeal to the administrator's concern for the good of the unit, honesty, and sense of fair play.
- Permit the administrator to "save face" by submitting that the grievance is nothing more than a misunderstanding, an omission or oversight which is understandable.
- Use logic and facts when appropriate to convince the administrator of the superiority of your claim.
- Use emotionalism as appropriate to the proceeding.
- Keep matters in a negotiating framework.
- Reach agreement—either resolve the dispute or agree to move to the next level.

Presence of the grievant at the grievance hearing

The strongest position during the grievance hearing is best assured by having a single voice to present the association's position. The association speaks for the member of the bargaining unit. There is usually no requirement for the aggrieved member to be present at the hearing.

Having the grievant present, however, helps to keep the grievance concrete and also has membership value in letting the grievant see how the association works. There are particular advantages to having the grievant present if:

- He has the sympathy of the administration and there are indications that he personally can influence their decisions.
- He is popular and well-liked. (The administration would be hesitant to hurt this person.)
- He has technical knowledge and first-hand information to

impress the administration and to make a good case.

- There is political advantage of having the grievant report back to the members the role of the association in the hearing.

If the grievant's presence is part of the strategy for the grievance hearing, he should be cautioned to say and do only as directed by the association representative. Any spoken word should be on cue from the grievant's representative.

If the grievant is to be present and to remain silent, this silence should not be negated by a nod, a shake of the head, an exclamation of assent, disgust, disagreement, or surprise. If the grievant desires to communicate disagreement or error, this should be done during a recess. The grievant and the association representative should have a pre-arranged signal to indicate the desire for a recess.

Some possible disadvantages of the grievant's presence in the hearing are:

- The particular grievant may irritate the administration. His mere presence can prejudice a case.
- The administration may object to making concessions in the presence of the member. Wishing to exhibit a position of authority, they may become formal and refuse to exchange confidences.
- The grievant is usually unfamiliar with the procedure and unprepared to participate.
- The grievant can be trapped into making admissions against his interests, even when warned.
- The grievant may speak out of turn, even when prepared in advance. This can take one or all of the following forms:
  - Agrees with a position or remark of the administration.
  - Irritates the administration by disagreeing with them.
  - Disagrees with the association representative.
  - Contradicts the association's position.

The decision as to whether to include the grievant in the hearing is an area where the association has to make a value judgment, and each case must be judged separately, on its merits.

The main objective of grievance advocacy should be the satisfactory resolution of the grievance—satisfaction for the grievant without compromising the organization position.

A secondary objective is to prepare a record which could be submitted in an arbitration hearing. The success or failure of this latter effort is related closely to the actions initiated at the outset of the grievance process. What the association does or fails to do in the critical early stages may well determine the course into and through arbitration. The evidence developed and the issues raised and considered at the lower levels are instrumental in directing the person who ultimately processes the matter in an arbitration hearing.

4. ARBITRATION IN GRIEVANCE IMPASSE

What Is Grievance Arbitration?

Arbitration is an integral part of the system of employment dispute settlement. It is designed to aid management in its search for efficiency, to assist association leadership in its participation in the school enterprise, and to secure justice for teachers.[7] A provision for terminal binding arbitration is an important ingredient of an effective grievance machinery—because it affords the possibility of the *adjudication of persisting grievance disputes by an impartial third party, selected and paid jointly by the association and the employer and authorized by them to render a binding decision.* Without such a provision, a procedure is usually worth little more than the paper on which it is written. Experience shows that efforts to settle grievances at the lower steps of the procedure often result in early impasse between the parties; and without a provision for third party review, the board, in the final analysis, has the last word.

Arbitration as a method of dispute settlement is used variously. This discussion is limited to arbitration of *employment contract disputes* and should not be confused with arbitration of negotiation impasses. There is much difference between third party interpretation of an established contract (rights arbitration) and third party determination of conditions of employment (interest

arbitration). The former involves much less curtailment of the public employer's discretion.

Before describing grievance arbitration and what it promises, it would be well to distinguish it from other third party processes for the resolution of rights disagreements:

1. *Fact-finding* or advisory arbitration is a voluntary process. It involves a hearing conducted by an individual or a panel appointed by an impartial agency or selected by the parties from a list of suggested names. The hearing officer or panel issues a report (usually public) with advisory recommendations.

2. *Litigation* requires that the remedy sought by a plaintiff be available in law. It, too, leads to the rendering of a binding decision, but it differs from arbitration inasmuch as it does not require the voluntary cooperation of a reluctant party. As stated in chapter 1, the courts often are unwilling to involve themselves in the adjudication of grievance-related complaints of employees—both in the private and the public sectors.

3. *Grievance arbitration*, according to Updegraff, may be described as the hearing and determination of a contract employment dispute between parties in controversy by a person or persons chosen by the parties, or appointed under statutory authority, instead of by a judicial tribunal as ordinarily provided by law. [8]

What Does Grievance Arbitration Promise?

Avoids impasse

"The generalities, the deliberate ambiguities, the gaps, the unforeseen contingencies, and the need for a rule even though the agreement is silent all require a creativeness in contract administration...." [9] Sometimes that creativity and flexibility are beyond the reach of subjectively involved parties to a contract dispute, and attempts to reach agreement as to the meaning of a particular clause are stalemated. Binding grievance arbitration lends assurance to a potential decisive culmination of such disputes.

Improves contract administration

It requires an unattainable amount of objectivity for the management of any enterprise to police effectively its own decisions,

and school boards and administrators are no exception. One purpose of a collective agreement is to limit management discretion to act in areas of common concern with employees and their organization; and the provision for binding grievance arbitration is the built-in enforcer in the master contract of the rights won by teachers in negotiation. Furthermore, the possibility of third party review of its actions provides a strong incentive to the board to administer the negotiated agreement fairly and objectively, and many possible violations are therefore avoided.

Reason instead of power

A grievance procedure that ends with the board's decision is no more useful than the board permits it to be. In those circumstances, disputes are likely to be a contest between the association and the school board; and the balance of power belongs to the board, with its legally vested authority and the cumulative power of the educational establishment. Terminal binding arbitration, with its promise of ultimate resolution by an impartial third party, neutralizes the power element and substitutes a process of rationality as a basis on which to make decisions in employment disputes.

Formalizes interpretation

Generally speaking, arbitrator decisions are more precedential than grievances conceded by the employer at the lower procedural levels. Such decisions may be instrumental in winning future or concurrent grievances of a similar nature, and they may also strengthen the association's position in contract negotiations. A successfully arbitrated individual grievance can therefore accrue to the benefit of all teachers in a school district.

Legality of Binding Arbitration

Legal objections

Some have claimed that to allow a third party to render a binding decision in a teacher-school board dispute is an improper delegation of the board's legal authority and responsibility to administer the affairs of the school district.

While the legality dispute continues in some sections of the country, it has been settled in others, on the basis that arbitration of grievances involving "the interpretation, meaning, or application of the collective agreement" does not require an arbitrator to formulate school policy. He may only order the board to abide by an agreement into which it has previously and voluntarily entered. A common strategy, then, is to limit the scope of arbitrable grievances (the jurisdiction of the arbitrator) to those involving interpretations of the contract. (Of course, a grievance does not have to be defined that narrowly prior to arbitration.) A maintenance of standards clause in the contract will prevent the diminution of previous personnel policies and practices.

Legal justifications

The authority of school boards to agree to binding arbitration in questions of contract interpretation was upheld in two recent court decisions. In *Local 1226 v. the City of Rhinelander,*[10] the Wisconsin Supreme Court rejected the contention that the arbitration of contractual grievances was an unlawful infringement on the board's statutory power. The court predicated its decision on the ground that the arbitration was designed to determine the meaning of an existing contract rather than "to set the terms of a collective bargaining agreement."[11]

The decision of a Michigan Circuit Court is stated even more conclusively. In *Local 965, AFSCME v. School District of Benton Harbor*[12] the court specifically enforced an agreement between the school district and a union covering its custodial and maintenance employees. The Michigan court distinguished, as did the Wisconsin court, between arbitration as a means of resolving a dispute over negotiation of the terms of an agreement and arbitration of a grievance arising under an agreement voluntarily reached.

State statutes

Increasingly in the future, legal problems of grievance arbitration may be dealt with in the negotiation statute itself. Two recently enacted statutes are of interest. The New Jersey law stipulates that "...grievance procedures *may provide for binding arbitration* as a means for resolving disputes."[13] The Pennsylvania Public Employee Relations Act goes even further: "*Arbitration* of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement *is mandatory.*"[14]

While the number of judicial and statutory justifications for binding grievance arbitration is increasing, it should be pointed out that the objections raised on the grounds of legality are sometimes a cover-up for a board's reluctance to recognize the authority of a third party to review and reverse its actions with regard to its employees. The binding arbitration provision is concrete evidence of the equality of the parties to the collective negotiations process—a fact that is sometimes difficult for boards to accept.

The Arbitration Clause—What To Negotiate

The reader is referred to the illustrative procedure in chapter 2 for a sample arbitration clause indicating the types of provisions which should be sought in the negotiation process. Some significant questions that are raised and answered implicitly in the clause are discussed below.

Arbitrability

The question of whether a particular grievance is subject to determination by an arbitrator is answered primarily in the manner in which the arbitration clause is written. An arbitrator gets his authority to decide an issue only from the mutual consent of the parties. The definition of the kinds of grievances the association and the board are mutually willing to submit to arbitration should be written right into the grievance procedure. The language used in our sample clause limits arbitrable grievances to those involving "the interpretation, meaning or application of any of the provisions of the Agreement." Grievances which fall outside the scope of that definition may not be submitted to arbitration, unless both parties agree otherwise.

In the preceding chapter, grievances were classified in four major categories: disagreements over the meaning of a contract clause; simple contract violations; disputes over the facts; and unreasonable or unfair use of administrative discretion. Before a grievance in any one of these categories may be arbitrated, it must be shown to involve the interpretation or application of the contract.

If the parties cannot reach consensus on whether a dispute involves the interpretation, meaning or application of the agree-

ment, provision is made for the question of arbitrability to be settled by the arbitrator.*

The following questions might be raised in determining the arbitrability of a particular grievance:

1. Is there an agreement to arbitrate (arbitration clause)?
2. Does the dispute come within the scope of the agreement?
3. Have the procedural steps required by the arbitration agreement been taken in proper time or waived?
4. Has the statement of the issue been agreed upon?

Arbitrator's authority

The extent of the arbitrator's power and discretion is found in the submission agreement. This is a contract between the parties, in which they undertake to submit a matter for determination by an arbitrator and agree to be bound by his decision. They also spell out the specific issues to be decided by the arbitrator. He is restricted to those issues in examining the evidence and making his award. (When agreement cannot be reached on a joint submission, the association may submit a "demand" for arbitration, and the arbitrator will determine the proper form of the question to be arbitrated.)

While the arbitrator's jurisdiction is limited to the adjudication of "disputes concerning the interpretation or application of any provision of the agreement," accepted practice appears to indicate at least five areas in which arbitrators regularly base awards on some other foundation than contract language. Cox identifies the areas as follows:[15]

1. *Pouring meaning into general phrases.* Such language as "just cause" or "merit and ability" provides no criteria upon which to judge its meaning. The arbitrator, by the evaluation of a complex of interests, must build some basis for decision making. Over a period of time, therefore, his decisions effectively construct the meaning of "just cause" or "merit and ability."

2. *Silence on remedies.* The power to determine whether a violation has occurred implies the power to grant a remedy for the

*In some states where the negotiation statute permits, an association may go to court for an order directing the board to arbitrate.

violation. Contracts, for the most part, do not provide guidance on remedies, and the arbitrator must make his award based on his own knowledge, experience, and sense of fairness.

3. *Notions of justice.* Grievance arbitration sometimes involves the application of substantive doctrines which are not mentioned in the collective agreement. For example, the contract might fix a seven-day limit on appeal of grievances, and the employee might wait ten days, with the agreement of his employer. If, at a later time, management's attorney invoked the time limit as a bar to arbitration, the arbitrator would probably reverse him on grounds of waiver or estoppel, even though it was not provided for in the contract.

4. *Implied obligations of parties.* There is an implied convenant in every contract of good faith and fair dealing. The principle applies that "where a party stipulates that another shall do a certain thing, he thereby impliedly promises that he will himself do nothing which will hinder or obstruct the other in doing that thing."

5. *Impact of past practice on silence.* When the contract is silent as to a matter but practice is clear, the arbitrator may insist that it be introduced into the contract by inference.

Although the above practices give fairly wide discretion to an arbitrator, that discretion can be limited effectively in at least three ways:

1. By providing that he not be free to exceed the intent of the parties.
2. By stipulating that he may not continue a line of interpretation beyond the point that the contract "stops."
3. Through the selection process—if the parties wish to be somewhat restrictive in the interpretation of the contract, they should pick strict constructionist arbitrators who will tend to hold closely to contract language.

During the hearing, the arbitrator has authority to rule on what evidence may be received and excluded, the manner in which it shall be presented, and in what order. He is not bound by technical court rules in respect to procedure. The arbitration hearing is an informal proceeding, and the arbitrator has wide discretionary powers.

The arbitrator's decision is commonly called an award and it

is final and binding on the parties. Referring again to Updegraff, "If the arbitration procedure was regularly set up and properly followed, and there was no fraud, corruption, or misconduct, the parties are bound by the award."[16] In other words, neither the employer nor the individual may appeal the arbitrator's decision to the courts, unless they can prove that he exceeded his jurisdiction or in some other way acted improperly. The arbitrator, of course, may not add to, modify, or subtract from the terms of the agreement; nor may he require either party to act contrary to law.

Function of the Local Association

Association control of initiation

The decision to carry a case to arbitration is an important one. It involves the expenditure of a large amount of association resources, and it affects not just the individual grievant but the membership as a whole. The association executive board is the only body that can balance the interest of the individual against the interest of the group and make a determination as to whether to proceed to arbitration.

Labor law and judicial decisions in the private sector preclude a representative organization from arbitrarily refusing to press an employee's grievance, but at the same time they recognize an organization's right to select those grievances it wishes to arbitrate.[17] Organizations generally concede that, if an individual wants to assert his right to act in a manner contrary to the group's interest, the organization will not prevent him from using the grievance procedure at the early steps, but it may bar him from taking the matter to arbitration. Furthermore, when a grievance has been processed through the early steps and the matter has been settled between the employer and the organization, the employee may be unable to seek redress against the employer in the courts, unless he can prove that the organization's refusal constituted "arbitrary or bad-faith conduct" in violation of its duty of fair representation.[18]

In *Vaca v. Sipes*, the Court maintained that if the individual were given control over arbitration and the representational organization were obliged to accept all arbitration demands, the resulting flow of frivolous claims would undermine the organiza-

tion's stature as bargaining representative, and in addition, would make arbitration so costly that both sides would probably abandon it.[19]

At the same time, the court envisioned little likelihood of the individual's rights being endangered by allowing the organization to balance the interests of its membership in determining which grievances to carry to arbitration.

While this is the direction which is being pursued in the private sector, there is as yet insufficient case experience in public education to predict the direction that will be followed in this environment.

Criteria for initiation

An important criterion in making the decision to arbitrate is: can we reasonably expect to win the arbitration? A loss before an arbitrator may be damaging in future interpretations of the contract and therefore more disadvantageous than a negotiated settlement at the lower steps of the procedure. Furthermore, resolution short of arbitration may afford a speedier adjustment, since an arbitrator's decision may not be reached until some months after the time a grievance was initially filed.

As Summers has stated, "Obviously, the [employee organization] cannot be saddled with the costs of presenting worthless grievances brought by mistaken or litigious employees."[20] He further makes the point that "...the [employee organization's] duty to represent does not require enforcing every jot and tittle of the contract." It is conceivable that a grievance (for example, an employee sent home for alleged loitering in the washroom) might be worth only a few dollars, establish no precedent, and involve no principle. The employee organization, in such an instance, might reasonably refuse to spend twenty times the value of the claim to get an arbitrator's award declaring management mistaken.

These factors must be weighed carefully by the association before it makes a determination to proceed to arbitration. It is therefore important that the arbitration clause in the grievance procedure designate the association as having sole control over arbitration initiation.

Preparing for arbitration

Presentation of the association position in an arbitration hearing differs from the approaches and techniques employed in the grievance process at the lower levels, and careful preparation is essential.

At levels I and II, a bilateral setting was maintained. The proposed settlement is the result of a negotiated process with each adversary using that strategy which was thought to present the greatest advantage. Individual strengths were countered by playing on the weaknesses of the adversary. Persuasion and perseverence were the hallmarks of the successful adversary.

At the arbitration hearing, a neutral third party is interjected into the grievance process. The adversaries must now play their roles before an arbitrator to influence his decision.

The skills required of the association representative in the arbitration hearing encompass all those that have gone before in the grievance process, as described in chapter 3. Additionally, preparing for the arbitration hearing requires skill and techniques similar to those of a trial attorney. This is achieved by close adherence to the following guidelines (discussed more fully in chapter 3) as the case is prepared.[21]

1. Identify the issues and state them clearly.
2. Analyze the master agreement from all four corners and apply it to the facts.
3. Analyze the history and development of the agreement.
4. Scrutinize the present grievance materials and information connected with the case.
5. Interview the witnesses and evaluate their evidence. Distinguish between what you know and what you can prove.
6. Obtain and evaluate evidence.
7. Search for arbitration awards covering similar factual situations.*
8. Develop a theory of the case.

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*The most useful awards that have precedential value are those awards that have been issued at an earlier time in that school district.

As the association prepares for the hearing, it should outline the best case which can be presented by the administration. A sample trial plan may help, and the association may even try a dry run. Every reasonable argument, every witness, and all the expected testimony or physical evidence should be set forth in its best light. Determine *their* best case as if you were representing them and had every expectation of proving your points. Besides the personal skill involved, there is a need to be aware of the personalities of the administration representatives, their line of reasoning, the rationale they will advance in support of their particular position, and the rebuttals they will offer to the association arguments.

As you develop a theory of the case, keep the following in mind:

- What will be your main argument? What is the equity defense you will raise?
- What are your subsidiary arguments?
- Who are the witnesses you will call?
- What point will each witness support or refute?
- What evidence will you introduce?
- How will the witnesses and the evidence in their totality affect the hearing?
- In what order will you call the witnesses and present the evidence?
- What elements are missing in your case and what, if anything, can you do about it?

Having accomplished the foregoing, the entire case should be reviewed in a thoughtful and conscientious manner preceding the hearing. A failure to conduct a review of the case can result in misstatements, omissions of material facts, and even contradictions.

The arbitration hearing

The most important thing the association must remember in the hearing is that its job is to convince *the arbitrator* of the merits of its arguments—not the school board. The arbitration hearing is an

adversary process, and the other party will present its version of what happened. The association's version has to be put forward in as effective a way as possible.

The advocate's appearance at the arbitration hearing is the final and most severe test of his advocacy function. From the time of the preliminary investigation of the complaint, through the grievance processing and the case preparation, every action should have been taken bearing in mind the requirements of the arbitration hearing.

The thoroughness of the investigation, the detailed interviewing of witnesses, the painstaking search for evidence, the hours of effort to gain knowledge, both of the incident and of the terms and conditions of the agreement—all these exhausting and time-consuming steps in the grievance process culminate in the arbitration hearing. The probative value of what is presented depends to a great degree upon the manner of its presentation to the arbitrator. The effectiveness of the evidence may well be a function of the impression which the advocate makes upon the arbitrator.

Since the association is filing a claim against the employer, it is usually considered "the moving party" and therefore presents its evidence first. In dismissal cases, however, or cases of other disciplinary action, the employer moves first to set forth on the record the evidence to support his action. Most arbitration hearings that do not involve a dismissal are conducted in the following order:

1. *Opening statement by the association,* followed by management's. State the factual situation, and show how the facts comprise a misapplication, misinterpretation, or violation of the agreement. Suggest an appropriate solution, with reasoning. Associations sometimes formulate this part of their statement in such a way that the arbitrator can "throw a crumb" to management in his award and still satisfy the association and the grievant. (It is a good practice to write your opening statement, summarizing your arguments, and give it to the arbitrator.)

2. *Presentation of evidence,* witnesses, and arguments by the association. Make points one at a time, supporting with appropriate evidence. Provide that someone be able to field inquiries on exhibits.

3. *Cross-examination by management.* This will probably involve questioning of association witnesses and documents, in an attempt to cast doubt on their relevance and materiality.

4. *Presentation of evidence,* witnesses and arguments by management.

5. *Cross-examination by the association.* Do not ask a question to which the answer has already been given, and do not question witnesses unless you know their answer will weaken the opposition's case.

6. *Summation* by the association and management. Use only evidence brought out in the hearing. Emphasize the strong points of your argument, while pointing out the failure of management to discredit your case.

After the hearing, the parties may decide to file written briefs with the arbitrator. This adds to the cost of the case (since the arbitrator must be paid for additional study time), and also to the time lapse before he reaches a decision. A written brief is generally desirable, nevertheless, under the following circumstances: when the case is very complex; when many days are required for the hearing; or when the opposition intends to file a brief. Since no communication is allowed between the arbitrator and the parties except in the other's presence, briefs are often sent to the AAA. Following receipt of the briefs, the arbitrator is allowed 20 days in which to complete his study and draft his decision. His "award" then becomes final and binding on the parties.

Reducing arbitration expenses

Although cost is secondary to maintaining the integrity of the arbitration process, there are some preparation steps an association can take to reduce costs:[22]

1. Thoroughly investigate the case—it may lead to settlement.

2. Stipulate to as many facts as possible, to reduce hearing time.

3. Use prehearing meetings to reduce the number of points in issue.

4. Consider alternative ways of presenting evidence—exhibits, depositions, limiting the number of witnesses, etc.

5. Prepare the witnesses in advance, so that their examination is direct and short.

6. Know the case thoroughly, so that your presentation is speedy, efficient and orderly.

7. Consider case presentation by briefs, when appropriate, to obviate need for a formal hearing and transcript.

8. In simple grievances without contract interpretation significance, the association and management may agree to ask the arbitrator not to draft an opinion justifying his award, but simply to make a decision.

9. In some cases, the costs of arbitration might be shared by the local and state associations, to make it more economically feasible for the smaller associations.

10. Consider not asking for a transcript or purchasing only that part that is absolutely necessary.

5. SPECIFIC FUNCTIONS OF THE LOCAL ASSOCIATION

Over half of all teachers in the United States now operate under some form of negotiated agreement. This publication is designed to assist those teachers to make their agreements have force and meaning. The Commission believes that it will also have relevance for teachers in less favorable situations.

Basically, three types of representational models exist in school districts today:

1. *No recognition.* In some school districts, the board does not formally recognize any representative of the teachers. An association may exist and function well, but it has no recognition status for purposes of representation. Usually, the board allows teachers to grieve through the administrative line. This situation is far from ideal, since the ultimate resolution of disagreements may depend on the goodwill of the board or the use of extra-procedural political suasion. Despite the problems inherent in this type of structure, however, it is in the interest of an association in this situation to carry out as many as possible of the functions described in this chapter. By helping teachers process their grievances and standing with them before their employer, the association gains the confidence of its members. The "coercive" tactics discussed on page 9 can be of assistance. If the association is willing to go to battle with the board on troublesome issues in behalf of members, it will

find that teachers are more likely to support association efforts to secure negotiated agreements.

2. *Multi-recognition.* Some districts formally recognize two or more employee organizations for the purpose of discussing policy. The general practice is to have a single grievance procedure, and to allow the individual to be represented by his own organization. This type of system, while granting recognition, still poses serious problems. Since recognition is not exclusive, competition for members is active, and the grievance process is likely to become a tool in the campaign for members. The highly competitive atmosphere may lead to a sort of internecine warfare, in which the original purposes of a grievance procedure are lost. Without exclusive recognition, the association must advocate the interests of its members and protect its own interests as best it can. Many of the ideas included in this publication will be of use to associations in this situation, as they seek to obtain exclusive recognition.

3. *Exclusive recognition.* The third type of model is that in which a single association is recognized by the board as the exclusive representative of teachers for purposes of negotiation. This type of organization has been found to be preferable in relation to grievance administration for two major reasons:

- It reduces the use of the grievance procedure as a tool in the campaign for members.
- It reposes responsibility for representation in a single, identifiable entity, and failures are therefore more easily revealed and corrected.

This last model is used in this publication because experience indicates that it is more effective than other models, because teachers have shown that this is their preference, and because it is becoming the pattern nationwide.

Management Scrutiny

The first association function in policing the contract is to devise a method for surfacing complaints - discovering violations at the school building or school district level. A mechanism must be provided for securing an overview of executive decisions in the day-by-day implementing of contract and board policy provisions, and for reporting possible or actual violations to the association. The

observation must be systematic and extensive if the association is to fulfill its representation function.

The association must decide how best to carry out the observation and reporting functions. There are several hypothetical possibilities:

1. *An association committee* acts as an observation post in the school district, receiving information about complaints, gripes, and conflict. It decides which matters should be grieved. This approach usually fails because of the remoteness of the committee from the grievance source.

2. *The members* themselves report violations. This idea has merit, but it could possibly result in a very uneven reporting flow. Many members are not familiar enough with the contract to know when violations have occurred.

3. *A grievance representative* reports for his building. Experience in many associations has shown that this technique works best. By providing a number of individuals (one for each forty teachers) with the specific responsibility of monitoring a building, the association can achieve an optimum level of grievance detection and reporting.

There are certain advantages to having one or more grievance representatives in each school building. Their presence is a daily reminder and guarantee to the members of the availability and full aid of the association.

If the grievance representative is to be successful in his task, he must be free from restraint, intimidation, and harassment. Insofar as contract and law are concerned, there is no status of "super seniority" awarded to grievance representatives. However, in both the private and public sectors, the prevalent practice in successful organizations is to build such a status informally around the representative - to reduce his vulnerability to harassment by signalling group support for his actions to management.

For maximum efficiency, the grievance representative's role should be delimited. As stated, his function is to observe and report undesirable practices of administration in a given building. To this end, he must have sufficient knowledge of the agreement to detect violations. He should not, however, be called on to make final determinations on the merit of complaints. To serve members effec-

tively, he needs the full support and aid of association officers. In turn, he often is helpful to them, if seen by the teachers in his building as an effective, member-serving representative of the association, by obtaining support for the organization.

In training grievance representatives, the association should make sure they are knowledgeable about:

1. *What to look for.* The grievance representative should be familiar with those sections of the agreement that are likely to be sources of grievances. A basic list of 10 to 15 crucial sections should form the core of his training in this area. (This aspect of training is discussed more fully below.)
2. *Gaining the confidence of teachers.* A grievance representative must understand the responsibility of maintaining the confidentiality of information given him by teachers.
3. *Whom to report to.* He must know who the "grievance chairman" is (discussed below), how to contact him and when to report. He reports anything that looks like a possible grievance.

What can the member do?

The work of the grievance representative can be facilitated if the members are knowledgeable about certain things. The more the members understand the process, the more efficiently it works. The best training is actual participation in the grievance process; however, certain questions should be answered for members by the association:

1. What is the grievance procedure?
2. Who is my grievance representative?
3. What may I grieve?
4. When should I grieve orally and when in writing?
5. What time limits exist?

Contract clauses for strategic exploitation

Certain clauses in the negotiated agreement are more important to the association because they promise a danger or an advantage, and they therefore become a departure point for making priority

decisions about the training of grievance representatives. It must be assumed that most grievance representatives will be inexperienced in regard to a lengthy and complex contract, and it is unrealistic to attempt to bring them to a state of full understanding of every contract clause. A more appropriate strategy might be to focus the training on those areas that can be anticipated to offer opportunity for advantageous exploitation or to represent special vulnerabilities.

In reviewing contract clauses in preparation for a training approach, five kinds of clauses are illustrative of such a focus:

1. *The clause language is vague* and, if it is not *tightened* through grieving, inequities are highly likely.

   Example: "In the event of an emergency, the principal has authority to modify the terms of this Agreement and to take such actions as necessary to maintain the efficiency of his building."

The problem with this clause is that the principal may seek to define "emergency" to cover a number of situations, to the disadvantage of teachers. Through grieving, the association might be successful in restricting the meaning of "emergency" to, say, a snowstorm, and thus reduce the principal's discretion.

2. *The clause language is vague*, and expansion of the meaning through grieving would be beneficial to the association.

   Example: "Teachers may exercise reasonable means to assure control of their classes."

The association's strategy here might be to increase the number of things a teacher could do under "reasonable means." Grieving might give the teacher a voice in the expulsion or suspension of students, or the right to exclude a disruptive student from the classroom for a specific period of time, despite the silence of the contract as to these acts.

3. *A contract provision is new* and likely to place a difficult *burden* on the administrator in providing a right to teachers.

   Example: "All evaluations of teachers must be reduced to writing, and teachers must have an opportunity to sign and rebut the evaluation."

Because the clause is new and frequently troublesome to the administrator, violations may occur. Grievance representatives should

be aware that the newly-won right may be lost unless the provision is enforced.

4. *A contract provision is new,* and the departure from custom and the *inertia* of the building threaten noncompliance.

   Example: "Faculty meetings will be held once a month and will be confined to one hour in length, except in special circumstances, at the agreement of the Superintendent and the Association."

In a district where the practice has been to hold lengthy weekly faculty meetings, the weight of tradition tends to predict a return to the status quo of fairly frequent and long meetings. Again, it may be necessary to grieve, in order to protect the new right.

5. *A clause allows an administrator to exercise unreasonable discretion,* and the association grieves to ban a particular application of the clause.

   Example: "Teachers shall comply with ali reasonable rules of professional employment."

If, under this clause, the principal tries to enforce a rule that teachers will be discharged for any activity in behalf of a candidate for local office, the association might grieve to obtain an arbitrator's decision that such an application was unreasonable. That kind of decision would not change the meaning of the clause, but it would limit the board's rule-making power.

Grievance Evaluation

Once the grievance representative becomes aware of complaints or violations, he passes them on to the person designated by the association to receive, evaluate, and further process complaints of contract violation. For convenience' sake, we will call him the 'grievance chairman."

Grievance evaluation is the most difficult task in the whole spectrum of grievance processing. To be effective, it requires a considerable amount of knowledge and skill. Experience has shown that efficiency is increased and the value of a unified approach maximized, when the responsibility for this phase of the process rests with one person.

Some cautions should be observed, however, and some checks and balances established. For example, the grievance chairman

might be required to report to the PR&R committee at its regular meetings, and the committee might have the right to review his decisions. In addition, the aggrieved person should have the right of appeal from the chairman's decisions.

With those caveats in mind, one of the following association persons could serve the function of evaluating grievances:

1. The PR&R chairman - His work with PR&R may give him a broad background in the association and a depth knowledge of grievance, legal, and other problems.

2. The executive secretary (or UniServ staff person) - If available, this individual might be a likely choice. He has an office, time to devote to the task, and broad experience in all aspects of the association's work.

3. Any other association officer, who by virtue of training or experience, is qualified to make substantive decisions.

Who will advocate and how?

When the association has examined the grievance in light of the factors discussed in chapter 3 and determined to support the member's claim, the following decisions must be made:

1. *Who will be the grievance advocate?* The association must decide whether the grievance representative can serve as the member's advocate at level one, or if some other person, perhaps a member of the committee, might be more effective. This consideration will increase in importance as the association gains experience in contract administration and some members develop highly sophisticated skill in advocacy. Large urban associations often specialize committee members, so that expertness in particular areas, such as discharge, insurance, and compensation, may be developed.

Where possible, it is desirable to carry up the grievance representative who assisted the member at step one to the higher levels of the procedure. Besides serving as a training ground for the representative, it will help to keep the grievance concrete. Carrying up the grievant throughout the various steps helps him to see what the association and administration are and how they function.

2. *What strategy will the advocate use?* The association will consider, with the advocate, what specific course of action to pursue in processing the claim. They will develop equity defenses and de-

sired adjustment, and will determine how to present the grievance in its best light. Specific techniques are discussed in chapter 3.

The grievance chairman provides an information copy of his decision to the PR&R committee, for their review. He also informs the committee when he exercises his discretion to reject an individual's request for support in the grievance procedure. As mentioned earlier, his refusal is appealable by the grievant to the PR&R committee and ultimately to the association executive body or membership.

Decision not to support

In some instances, the association might refuse to initiate a grievance in behalf of an individual or to speak in behalf of his claim. In making such a troublesome decision, the association might raise the following questions:

1. Is the claimant seeking a personal benefit not available under the contract which, if granted, would violate the interests of the unit?
2. Can the claim be shown to be fraudulent in nature? (For example, a member suspended for abuse of sick leave, after submitting a doctor's excuse, is found to have forged the excuse.)
3. Does the claim of one teacher oppose the job right or standing of another teacher?

Although all members of the bargaining unit are entitled to fair representation and no action should be taken which negates the terms and conditions of the agreement, there are situations where the settlement of a grievance will adversely affect another member or group. This cannot be the basis for noninvolvement or for refusing to process a grievance. The association cannot be neutral; such neutrality would cast doubts on the very integrity of the grievance process.

When a position is taken against one member, or a group, such action must be a "good faith position." The association can advocate interests which are antagonistic to the interests of another member, but there should be adequate notice given to the adversely affected person or group. The right to be present and the opportunity to be heard would provide due process to adversely affected

persons. Most associations must take the orientation, "the contract speaks."

Referral to other association agencies

Occasionally, a complaint raised in the grievance forum would be dealt with more appropriately in another channel. In these instances, the matter should be referred to the correct association agency. For example:

1. When legal implications are present, which might require an attorney's advice, or even legal action, the case should be shifted to the PR&R committee for referral to the association's attorney.
2. Some claims are not grievances at all, and would be better handled by some other committee - such as the welfare committee in cases of some insurance claims or financial problems.
3. Where claims with ethical implications are involved, the association should refer to the NEA publication, *Protecting the Profession's Interest in Ethical Conduct*,[23] for discussion of possible actions.
4. Where a complaint is raised on which the contract is silent, it might be referred to the negotiating committee for future settlement.

Publicizing Grievance Settlements

Once settlement of a grievance is obtained, the association's responsibilities are not over. In fact, an important function has just begun - the task of publicizing association activity. If the settlement represents a favorable interpretation for the association, they will want to make their success known for the following reasons:

1. When other members become aware of association successes, they may be more disposed to use the grievance procedure themselves.
2. The association gains support from members as they see their organization working in their behalf.
3. If the settlement has precedential implications, informed members may act with more confidence in the future. Grievances are collective acts.

The techniques of publicity are a matter for the association to decide and may be various. A large association with printing facilities may distribute a grievance report every month. All associations should try to issue at least a yearly report of the grievances that have been processed.

The results of cases might go out in an association newsletter. Whatever technique is used, care should be taken to preserve the rights of individual grievants to confidentiality. A grievant may prefer to have his name left out of a report and the facts abstracted. The association has an obligation to consult and observe the member's wishes.

6. THE EFFECTS OF GRIEVANCE PROCESSING ON ASSOCIATIONS AND SCHOOL SYSTEMS

Grievance procedures have been considered in some detail in earlier chapters: what they are; how to negotiate them; how to recognize good and bad clauses; how arbitration works; the association's advocacy role.

Once a grievance procedure has been negotiated, it is fair to ask what impact, if any, it will have on the school district, on the local association, and on future negotiations.

Inconsistency, Centralization, Decentralization

In most school systems which have no grievance procedure, school policies are inconsistently applied. There is variation from building to building, and there are variations within buildings - some teachers are treated differently from others. There may be several reasons for this inconsistency in applying and interpreting school policies, but the primary one is that there is no effective pressure to centralize and make consistent the applications of school policy.

Under a grievance procedure which meets the standards described in this publication, grievance processing will be an effective pressure that causes a change in previous methods of operation.

In the beginning, consistency will be achieved through centralizing interpretation of school policies at the higher levels of administration. As experience in grievance processing is gained, there will be an informed decentralization, where principals take more responsibility for interpreting policies within the limits of the contract and under precedents set in grievance settlements.

This pattern of change in the school system from inconsistency to centralization to decentralization will also occur in the local association.

It is helpful to review what it is about grievance processing which causes the school system and the association to change in this manner.

Step one of grievance processing involves the grievant, the grievance representative, and the principal. It is at this point that the impact of the procedure is first and most often felt.

One of the most immediate results of the process at this level is that both the principal and the grievance representative will make mistakes in the process which will cause them to begin to check with others—with those above, with their colleagues, and with each other. If they are unaware of their mistakes, others will make them aware—the superintendent will reverse the principal at step two, or the grievance chairman will let the grievance representative know that he has "blown" the case.

Principal

Some associations maintain an inclusive bargaining unit--that is, their membership includes administrators along with teachers. It is obvious that in some instances—as, for example, in a grievance dispute between a principal and a superintendent—such an association owes an allegiance to the employee interests of its administrator member. In a teacher-administrator dispute, however, the administrator is acting not in an employee role, but as agent of the employer, the board of education. This discussion of the role of the principal assumes that context.

Grievance processing can be seen as forcing on the principal a series of behaviors that he may resist strongly at first. Principals often feel that grievance processing is too time-consuming and concerned with matters too petty to deal with. A principal may feel that his task of carrying on the education program of the school is

difficult enough without his having to be concerned with formal involvement in the grievance procedure.*

As we said in chapter 2, past practice in many school systems prior to the establishment of grievance procedures shows that teachers with complaints often have gone around the principal to a chief administrator, whose "door is always open." While this approach may be satisfying to the chief administrator, it weakens the principal's authority and morale. The teacher may rightfully question the necessity of discussing problems with his immediate superior when he can achieve quicker solutions by going around his superior to the top man. This bypassing of the principal to the top administrator may blow up an issue out of proportion. This approach also denies the chief administrator the opportunity to assess the effectiveness of principals in handling teacher complaints. And it makes it easier for weak principals who do not wish to assume their responsibility for handling problems in their buildings to avoid doing so with impunity. The establishment of a grievance procedure of the kind we have been discussing will reduce the frequency of this practice of bypassing the principal.

Despite the resistance of the principal to the process, he is required by it to do several things. First he must meet the grievant and his representative, to listen to and discuss the complaint. If there is no settlement, he must answer the grievance in writing, providing reasons to justify his actions. If the matter is pursued, he may have to participate in conferences with his superior at the second level in the grievance process. Last, he may have to defend his answer before an arbitrator.

What effect does this have on the principal's behavior? As soon as his position has been reversed a few times, or he has been embarrassed by an arbitrator's questions, he will begin to check with others. In the beginning, he will probably check up the administrative line with the assistant superintendent or the superintendent, to see if his written answer is in line with the administration's view of the matter. Also, he will begin to check with other principals to see if what he is doing in his building is consistent with what is going on in the rest of the school system.

More important, after some experience in grievance processing,

*The above statements need to be balanced with an understanding that, on occasion, a principal will attempt to encourage a teacher to enter the grievance procedure to seek an interpretation of the contract which the principal favors but which he is not free to act upon himself.

the principal will begin to check with his superiors and with other principals *in advance* of his decisions which might give rise to complaints.

Some principals will also begin to discuss actions they intend to take with the association grievance representative and with those teachers who may be affected by their actions. This can be a good testing of a proposal and may help a principal to avoid decisions which could give rise to a grievance. There is, however, some danger inherent in this process to the grievance representative, which will be discussed later in this chapter.

The effects of checking on the administration are several. It can tighten administrative decision making and communication. Each school in the district will cease to be a fiefdom, for similar decisions will be made and applied throughout the system. It tightens administration in the school, for the central administrator will want to be sure that principals are giving consistent grievance responses. Principals can be a party to the making of precedential decisions at step one, which can be seen to dilute management prerogatives.

Principals will be encouraged to check with their superiors. Superiors will recognize that a principal probably does not know, or will not take time to know, all the contract details. And his supervisors do not want him to misinterpret the contract or settle the grievance in conflict with other grievance settlements in the district. The effects of checking by the principal, therefore, may be to centralize administrative decision making and make it consistent throughout the system.

After two or three years' experience under a grievance procedure, the centralization of administration—which has probably replaced inconsistent policy application or administration in the school system—may give way to an informed decentralization. That is, as principals become more comfortable with the procedure and more knowledgeable of their authority under it and the contract, they will be willing to make nonprecedential decisions. Moreover, they will be *urged* by the superintendent to exercise that authority.

The local association

Checking will also be necessary within the local association. The grievance representative in the local building will learn when to check with the association's grievance chairman. The PR&R committee itself will learn to check with the state association, and

sometimes the national, for precedent before proceeding to extensive and costly arbitration.

The association must also recognize and prepare its members for what our experience to date shows: that initially most grievance settlements will favor the grievant and the association. But as time goes on, the administration is likely to tighten and there may be a sharp drop in cases won by the association.

The grievance representative must not be passive. It is his job to assist in enforcing the contract by detecting violations and getting them filed. If he finds violations in his building, but fails to produce a grievant, he may check with the grievance chairman. The chairman's obligation will be to determine if the association should grieve in its own behalf or if it might use a similar grievance in another building to seek adjustment.

If a principal frequently checks in advance of some of his decisions with the grievance representative, the representative must guard against over-use of this device. He must not let himself be put in the position of making decisions for the principal. A weak principal may tend to rely too heavily on grievance representatives. He may use a frank discussion about whether a particular approach would be acceptable to teachers against the grievance representative, by prefacing his announcement of a decision to teachers with, "I've talked it over with your representative and he agrees with me that it's okay." A few unpopular decisions by a principal with that kind of introduction will destroy the effectiveness of the grievance representative.

Checking within the association, just as in the school system - by the grievance representative with the grievance chairman, by the chairman with the committee, and by the local committee with the state association - will tend to improve communications and to provide consistent protection and treatment to members.

Also, the grievance process forces the association, through its grievance representatives and PR&R committee, to perform its duty under the contract - that is, to scrutinize contract administration on behalf of its members. It is the association's job to see that the administration directs teachers according to rules and regulations, not according to whim or favoritism; to assure that official policies are administered and interpreted fairly and equitably.

Detecting Hot and Cold Spots

Grievance processing may alert both the administration and the local association to some basic difficulty if a great many grievances are arising from one school. A disproportionate number of grievances from one school in a system is bound to be noticed and may be indicative of some basic trouble with which top administration should deal—such as a principal who is not following the agreement.

It is also a signal that something may be wrong if grievances never come from a particular school. The contention that "everything is fine at my school—we had no grievance complaints this year" is not based on reality. No complaints at all should be a sign to the association, particularly, that the school should be checked. The grievance representative may not be doing his job.

Negotiation

One of the more obvious and quite important effects of grievance processing is on negotiation of subsequent contracts. The kinds of complaints that are processed, and their history as they move into the machinery of grievance review, provide an excellent means of appraising the quality and content of the contract and of other school district policies which may not be incorporated in the contract.

Experience in grievance review can help answer the general question: "Is the contract inclusive, does it cover all necessary areas?"

Grievances may be indicators of:

- unclear contract language, which should be tightened
- contract language which, though clear, is detrimental to many members when enforced
- gaps in the contract - instances where contract language is needed but is absent from the present agreement.

The association PR&R committee has the obligation to review grievances that have been processed and to inform the negotiation team of these points, so that the team can take them into account when negotiating the next contract.

Effect on Members

There is at least one other effect of grievance processing which should not be overlooked. The fact that it is less obvious, perhaps, than those just discussed does not make it less important. That is the effect in the local association on member participation, attraction, and retention.

It seems clear that a primary reason for a teacher's interest in grievance processing is his desire to be fully heard when he has a grievance complaint. It may be that the grievance is not settled to the interest of the teacher, but satisfaction is often obtained when he feels that his needs have been seriously considered and listened to, both by his colleagues, through the association, and by the administration to which he is complaining. Being heard may be almost as satisfying as prevailing.

The obligatory consideration which must be given to a teacher's complaint by the principal and by others up the line if the grievance is pursued, explains why teachers do not think the grievance procedure is failing, even when, as mentioned earlier, the rate of success in the teachers' behalf drops.

Too often in local associations, most members have a small role in formal procedures on matters of substance. The major exceptions are in times of crisis, such as a strike, or when it is time to ratify a contract.

Grievance processing permits substantive participation by members in their working environment. The grievance takes place where the member is and gives him an opportunity, not only to be heard by the administration, but to discuss his problems with his colleagues. If he is satisfied with the way his case is handled by the association, whether the settlement is in his favor or not, he is likely to remember that when it is time to pay dues again. So will his colleagues.

Sophisticated beginning teachers, and many experienced teachers considering a move, are asking as many questions today about local associations as they ask about school districts. One of the questions is how well the local association represents its members. Effective grievance processing is an important part of the answer to that question.

APPENDIX I

SAMPLE GRIEVANCE REPORT FORM 24

Grievance# _____ _____ School District Distribution of Form

GRIEVANCE REPORT

1. Superintendent
2. Principal
3. Association
4. Teacher

Submit to Principal in Duplicate

Building	Assignment	Name of Grievant	Date Filed

STEP I

A. Date Cause of Grievance Occurred _____

B. 1. Statement of Grievance _____

_____

2. Relief Sought _____

_____

_____

Signature Date

C. Disposition by Principal _____

_____

_____

Signature of Principal Date

D. Position of Grievant and/or Association _____

_____

_____

Signature Date

(NOTE: If additional space is needed in reporting Sections B1 and 2, attach an additional sheet.)

STEP II

A. Date Received by Superintendent or Designee _____

B. Disposition of Superintendent or Designee _____

_____

_____

Signature Date

C. Position of Grievant and/or Association _____

_____

_____

Signature Date

STEP III

A. Date Submitted to Arbitration _____

B. Disposition and Award of Arbitrator _____

_____

_____

Signature of Arbitrator Date of Decision

APPENDIX 2

AMERICAN ARBITRATION ASSOCIATION
VOLUNTARY LABOR ARBITRATION RULES

as amended and in effect January 1, 1970

1. **Agreement of Parties**—The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever, in a collective bargaining agreement or submission, they have provided for arbitration by the American Arbitration Association (hereinafter AAA) or under its Rules. These Rules shall apply in the form obtaining at the time the arbitration is initiated.

2. **Name of Tribunal**—Any Tribunal constituted by the parties under these Rules shall be called the Voluntary Labor Arbitration Tribunal.

3. **Administrator**—When parties agree to arbitrate under these Rules and an arbitration is instituted thereunder, they thereby authorize the AAA to administer the arbitration. The authority and obligations of the Administrator are as provided in the agreement of the parties and in these Rules.

4. **Delegation of Duties**—The duties of the AAA may be carried out through such representatives or committees as the AAA may direct.

5. **National Panel of Labor Arbitrators**—The AAA shall establish and maintain a National Panel of Labor Arbitrators and shall appoint arbitrators therefrom, as hereinafter provided.

6. **Office of Tribunal**—The general office of the Labor Arbitration Tribunal is the headquarters of the AAA, which may, however,

assign the administration of an arbitration to any of its Regional Offices.

7. **Initiation Under an Arbitration Clause in a Collective Bargaining Agreement**—Arbitration under an arbitration clause in a collective bargaining agreement under these Rules may be initiated by either party in the following manner:

(a) By giving written notice to the other party of intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute and the remedy sought, and

(b) By filing at any Regional Office of the AAA three copies of said notice, together with a copy of the collective bargaining agreement, or such parts thereof as relate to the dispute, including the arbitration provisions. After the Arbitrator is appointed, no new or different claim may be submitted to him except with the consent of the Arbitrator and all other parties.

8. **Answer**—The party upon whom the demand for arbitration is made may file an answering statement with the AAA within seven days after notice from the AAA, in which event he shall simultaneously send a copy of his answer to the other party. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answer shall not operate to delay the arbitration.

9. **Initiation under a Submission**—Parties to any collective bargaining agreement may initiate an arbitration under these Rules by filing at any Regional Office of the AAA two copies of a written agreement to arbitrate under these Rules (Submission), signed by the parties and setting forth the nature of the dispute and the remedy sought.

10. **Fixing of Locale**—The parties may mutually agree upon the locale where the arbitration is to be held. If the locale is not designated in the collective bargaining agreement or submission, and if there is a dispute as to the appropriate locale, the AAA shall have the power to determine the locale and its decision shall be binding.

11. **Qualifications of Arbitrator**—No person shall serve as a neutral Arbitrator in any arbitration in which he has any financial or personal interest in the result of the arbitration, unless the parties, in writing, waive such disqualification.

12. **Appointment from Panel**—If the parties have not appointed an Arbitrator and have not provided any other method of appointment, the Arbitrator shall be appointed in the following manner: Immediately after the filing of the Demand or Submission, the AAA shall submit simultaneously to each party an identical list of names of persons chosen from the Labor Panel. Each party shall have seven days from the mailing date in which to cross off any names to which he objects, number the remaining names indicating the order of his preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an Arbitrator to serve. If the parties fail to agree upon any of the persons named or if those named decline or are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator shall have power to make the appointment from other members of the Panel without the submission of any additional lists.

13. **Direct Appointment by Parties**—If the agreement of the parties names an Arbitrator or specifies a method of appointing an Arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of such Arbitrator, shall be filed with the AAA by the appointing party.

If the agreement specifies a period of time within which an Arbitrator shall be appointed, and any party fails to make such appointment within that period, the AAA may make the appointment.

If no period of time is specified in the agreement, the AAA shall notify the parties to make the appointment and if within seven days thereafter such Arbitrator has not been so appointed, the AAA shall make the appointment.

14. **Appointment of Neutral Arbitrator by Party-Appointed Arbitrators**—If the parties have appointed their Arbitrators, or if either or both of them have been appointed as provided in Section 13, and have authorized such Arbitrators to appoint a neutral Arbitrator within a specified time and no appointment is made within such time or any agreed extension thereof, the AAA may appoint a neutral Arbitrator, who shall act as Chairman.

If no period of time is specified for appointment of the neutral Arbitrator and the parties do not make the appointment within

seven days from the date of the appointment of the last party-appointed Arbitrator, the AAA shall appoint such neutral Arbitrator, who shall act as Chairman.

If the parties have agreed that the Arbitrators shall appoint the neutral Arbitrator from the Panel, the AAA shall furnish to the party-appointed Arbitrators, in the manner prescribed in Section 12, a list selected from the Panel, and the appointment of the neutral Arbitrator shall be made as prescribed in such Section.

15. **Number of Arbitrators**—If the arbitration agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator, unless the parties otherwise agree.

16. **Notice to Arbitrator of His Appointment**—Notice of the appointment of the neutral Arbitrator shall be mailed to the Arbitrator by the AAA and the signed acceptance of the Arbitrator shall be filed with the AAA prior to the opening of the first hearing.

17. **Disclosure by Arbitrator of Disqualification**—Prior to accepting his appointment, the prospective neutral Arbitrator shall disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Upon receipt of such information, the AAA shall immediately disclose it to the parties. If either party declines to waive the presumptive disqualification, the vacancy thus created shall be filled in accordance with the applicable provisions of these Rules.

18. **Vacancies**—If any Arbitrator should resign, die, withdraw, refuse or be unable or disqualified to perform the duties at his office, the AAA shall, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in the same manner as that governing the making of the original appointment, and the matter shall be reheard by the new Arbitrator.

19. **Time and Place of Hearing**—The Arbitrator shall fix the time and place for each hearing. At least five days prior thereto the AAA shall mail notice of the time and place of hearing to each party, unless the parties otherwise agree.

20. **Representation by Counsel**—Any party may be represented at the hearing by counsel or by other authorized representative.

21. **Stenographic Record**—Whenever a stenographic record is requested by one or more parties, the AAA will arrange for a stenographer. The total cost of the record shall be shared equally among parties ordering copies, unless they agree otherwise.

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22. **Attendance at Hearings**—Persons having a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall have the power to require the retirement of any witness or witnesses during the testimony of other witnesses. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other persons.

23. **Adjournments**—The Arbitrator for good cause shown may adjourn the hearing upon the request of a party or upon his own initiative, and shall adjourn when all the parties agree thereto.

24. **Oaths**—Before proceeding with the first hearing, each Arbitrator may take an Oath of Office, and if required by law, shall do so. The Arbitrator may, in his discretion, require witnesses to testify under oath administered by any duly qualified person, and if required by law or requested by either party, shall do so.

25. **Majority Decision**—Whenever there is more than one Arbitrator, all decisions of the Arbitrators shall be by majority vote. The award shall also be made by majority vote unless the concurrence of all is expressly required.

26. **Order of Proceedings**—A hearing shall be opened by the filing of the oath of the Arbitrator, where required, and by the recording of the place, time and date of hearing, the presence of the Arbitrator and parties, and counsel if any, and the receipt by the Arbitrator of the Demand and answer, if any, or the Submission.

Exhibits, when offered by either party, may be received in evidence by the Arbitrator. The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.

The Arbitrator may, in his discretion, vary the normal procedure under which the initiating party first presents his claim, but in any case shall afford full and equal opportunity to all parties for presentation of relevant proofs.

27. **Arbitration in the Absence of a Party**—Unless the law provides to the contrary, the arbitration may proceed in the absence of any party, who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the other party to submit such evidence as he may require for the making of an award.

28. **Evidence**—The parties may offer such evidence as they desire and shall produce such additional evidence as the Arbitrator may

deem necessary to an understanding and determination of the dispute. When the Arbitrator is authorized by law to subpoena witnesses and documents, he may do so upon his own initiative or upon the request of any party. The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the Arbitrators and all of the parties except where any of the parties is absent in default or has waived his right to be present.

29. **Evidence by Affidavit and Filing of Documents**—The Arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as he deems proper after consideration of any objections made to its admission.

All documents not filed with the Arbitrator at the hearing but which are arranged at the hearing or subsequently by agreement of the parties to be submitted, shall be filed with the AAA for transmission to the Arbitrator. All parties shall be afforded opportunity to examine such documents.

30. **Inspection**—Whenever the Arbitrator deems it necessary, he may make an inspection in connection with the subject matter of the dispute after written notice to the parties who may, if they so desire, be present at such inspection.

31. **Closing of Hearings**—The Arbitrator shall inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs or other documents are to be filed, the hearings shall be declared closed as of the final date set by the Arbitrator for filing with the AAA. The time limit within which the Arbitrator is required to make his award shall commence to run, in the absence of other agreement by the parties, upon the closing of the hearings.

32. **Reopening of Hearings**—The hearings may be reopened by the Arbitrator on his own motion, or on the motion of either party, for good cause shown, at any time before the award is made, but if the reopening of the hearing would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened, unless both parties agree upon the extension of such time limit. When no specific date is fixed in the contract, the Arbitrator may reopen the hearings, and the Arbitrator shall have 30 days

from the closing of the reopened hearings within which to make an award.

33. **Waiver of Rules**—Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object.

34. **Waiver of Oral Hearing**—The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

35. **Extensions of Time**—The parties may modify any period of time by mutual agreement. The AAA for good cause may extend any period of time established by these Rules, except the time for making the award. The AAA shall notify the parties of any such extension of time and its reason therefor.

36. **Serving of Notices**—Each party to a Submission or other agreement which provides for arbitration under these Rules shall be deemed to have consented and shall consent that any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under these Rules and for any court action in connection therewith or the entry of judgment on an award made thereunder, may be served upon such party (a) by mail addressed to such party or his attorney at his last known address, or (b) by personal service, within or without the state wherein the arbitration is to be held.

37. **Time of Award**—The award shall be rendered promptly by the Arbitrator and, unless otherwise agreed by the parties, or specified by the law, not later than thirty days from the date of closing the hearings, or if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the Arbitrator.

38. **Form of Award**—The award shall be in writing and shall be signed either by the neutral Arbitrator or by a concurring majority if there be more than one Arbitrator. The parties shall advise the AAA whenever they do not require the Arbitrator to accompany the award with an opinion.

39. **Award Upon Settlement**—If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon their request, may set forth the terms of the agreed settlement in an award.

40. **Delivery of Award to Parties**—Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the AAA. addressed to such party at his last known address or to his attorney, or personal service of the award, or the filing of the award in any manner which may be prescribed by law.

41. **Release of Documents for Judicial Proceedings**—The AAA shall, upon the written request of a party, furnish to such party at his expense certified facsimiles of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

42. **Judicial Proceedings**—The AAA is not a necessary party in judicial proceedings relating to the arbitration.

43. **Administrative Fee**—As a nonprofit organization, the AAA shall prescribe an administrative fee schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing shall be applicable.

44. **Expenses**—The expenses of witnesses for either side shall be paid by the party producing such witnesses.

Expenses of the arbitration, other than the cost of the stenographic record, including required traveling and other expenses of the Arbitrator and of AAA representatives, and the expenses of any witnesses or the cost of any proofs produced at the direct request of the Arbitrator, shall be borne equally by the parties unless they agree otherwise, or unless the Arbitrator in his award assesses such expenses or any part thereof against any specified party or parties.

45. **Communication with Arbitrator**—There shall be no communication between the parties and a neutral Arbitrator other than at oral hearings. Any other oral or written communications from the parties to the Arbitrator shall be directed to the AAA for transmittal to the Arbitrator.

46. **Interpretation and Application of Rules**—The Arbitrator shall interpret and apply these Rules insofar as they relate to his powers and duties. When there is more than one Arbitrator and a difference arises among them concerning the meaning or application of any such Rules, it shall be decided by majority vote. If that is unobtainable, either Arbitrator or party may refer the question to the AAA for final decision. All other Rules shall be interpreted and applied by the AAA.

APPENDIX 3

AMERICAN ARBITRATION ASSOCIATION, Administrator

Voluntary Labor Arbitration Rules

DEMAND FOR ARBITRATION

DATE:

TO: (Name) .....
(of party upon whom the Demand is made)

(Address) .....

(City and State) .....

The undersigned, a party to an Arbitration Agreement contained in a written contract, dated
which agreement provides as follows: (Quote Arbitration Clause)

hereby demands arbitration thereunder.

NATURE OF DISPUTE:

REMEDY SOUGHT:

You are hereby notified that copies of our Arbitration Agreement and of this Demand are being filed with the American Arbitration Association at its ..... Regional Office, with the request that it commence the administration of the arbitration.

Signed..... ...

Title.....

Address.....

City and State.....

Telephone.....

To institute proceedings, please send three copies of this Demand and the Arbitration Agreement, with the administrative fee, as provided in Section 43 of the Rules.

FORM L2 24M 12-68 INTEGRITY

APPENDIX 4

AMERICAN ARBITRATION ASSOCIATION

SUBMISSION TO ARBITRATION

Date:

The named Parties hereby submit the following dispute to arbitration under the VOLUNTARY LABOR ARBITRATION RULES of the American Arbitration Association:

We agree that we will abide by and perform any Award rendered hereunder and that a judgment may be entered upon the Award.

Employer .....

Signed by ..... Title .....

Address .....

Union ..... Local .....

Signed by ..... Title .....

Address .....

PLEASE FILE TWO COPIES

Reference Citations

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